

Report on the

Board of Dental Examiners

Hoover, Alabama



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Senator Paul Bussman
Chairman, Sunset Committee
Alabama State Senate
Montgomery, AL 36130

Dear Senator Bussman,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Board of Dental Examiners** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Board of Dental Examiners**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,



Ronald L. Jones
Chief Examiner

Examiner
Bilikisu Alabi

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PROFILE

Purpose/Authority

The Board of Dental Examiners licenses and regulates the practice of dentistry in Alabama under authority of the *Code of Alabama 1975*, Sections 34-9-1 through 34-9-65, 34-9-80 through 34-9-90, 34-38-1 through 34-38-8 and 20-2-2 through 20-2-58. The board examines and licenses qualified applicants as dentists or dental hygienists. The board permits qualified dentists to use general anesthesia and intravenous sedation in their practices. The board administers the Alabama Dental Hygiene Program (ADHP) for the training of dental hygienists. The board performs initial inspections of facilities, equipment and dental personnel for first time applicants for general anesthesia and parenteral [intravenous] sedation permits. The board also inspects mobile and portable dental clinics and annually issues state controlled substance registration certificates to licensees.

Through the Alabama Dental Professionals Wellness Program, the board promotes the early identification, intervention, treatment and rehabilitation of dentists and dental hygienists who may be impaired by reason of mental or physical illness or substance abuse to the extent that they are unable to meet the standards of the profession.

Characteristics

Members and Selection

Seven members:

- 6 dentists
- 1 dental hygienist
- Five dentist members and the dental hygienist member are elected respectively by licensed dentists and dental hygienists currently residing in Alabama. The sixth dentist member is appointed by the Alabama Dental Society, a membership organization composed of mostly minority dentists in Alabama. Any group of 10 or more currently licensed dentists, residing and practicing dentistry in the state, may nominate a candidate for a dentist position on the board.
- Any group of 10 or more licensed dental hygienists, residing and practicing dental hygiene in the State of Alabama, may nominate a candidate for the dental hygienist position on the board.
- The board conducts the election.

Code of Alabama 1975, Section 34-9-40

Term	<p>5 year staggered terms Limited to one term with no succession.</p> <p><i>Code of Alabama 1975</i>, Section 34-9-40</p>
Qualifications	<ul style="list-style-type: none"> • Actively engaged in the practice of dentistry or dental hygiene in Alabama for at least five years next preceding the date of election. • A citizen of Alabama. • May not be a member of the faculty of any dental school, dental college, dental hygiene school, or dental hygiene college. • May not have a financial interest in a commercial dental laboratory or a dental supply business. • May not have been found guilty of any state's dental practice act resulting in his license being placed on probation, suspension or revocation within the five years next preceding the date of election. <p><i>Code of Alabama 1975</i>, Section 34-9-40</p>
Racial Representation	<p>No specific statutory requirement. However, the <i>Code of Alabama 1975</i> Section 34-9-40(a) provides that one member must be selected by the Alabama Dental Society, a membership organization composed of mostly minority dentists in Alabama.</p> <p>One minority race member currently serves on the board.</p> <p><i>Code of Alabama 1975</i>, Section 34-9-40</p>
Geographical Representation	No statutory requirement.
Consumer Representation	No statutory requirement.
Other Representation	<p>The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/ rural, and economic diversity of the state.</p> <p><i>Code of Alabama 1975</i>, Section 34-9-40</p>

Compensation	<ul style="list-style-type: none"> Set by the board with no maximum stated in the law. Currently, compensation is \$300 per day for transacting board business (<i>Alabama Administrative Rule</i> 270-X-1-.08), in addition to reimbursement for travel expenses and per diem as allowed for state employees. <p><i>Code of Alabama 1975</i>, Section 34-9-41</p>
<u>Operations</u>	
Administrator	<p>Keith Warren Executive Director Services included in contract with Warren & Company of Montgomery, Alabama to provide administrative services Contract amount – \$225,000 annually effective April 15, 2011 through March 15, 2013.</p> <p><i>Code of Alabama 1975</i>, Section 34-9-43</p>
Location	<p>5346 Stadium Trace Parkway, Suite 112 Hoover, AL 35244 Office Hours: 8:00 AM - 5:00 PM (Monday – Friday)</p>
Examinations	<p>Dentists: The board prepared and administered the dental licensing exam through 2009. In 2010, the board began accepting the following regional examinations for licensure:</p> <ol style="list-style-type: none"> 1. Council of Interstate Testing Agencies (CITA) 2. Central Regional Dental Testing Service (CRDTS) 3. North East Regional Board (NERB) 4. Southern Regional Testing Agency (SRTA) 5. Western Regional Examining Board (WREB) <p>Only the CITA examination is administered in Alabama at the University of Alabama School of Dentistry. The 2011 examination calendar shows the exam is conducted monthly, January through August with the exception of July, and rotated among the member-boards' jurisdictions.</p> <p>Examination fees are paid directly to the testing agencies.</p> <p>Following are the exam pass/ fail rates for the three-year period ending in 2009 for dentists licensed through the board-administered examination. The board ceased administering a dental licensing exam in 2010. All applicants are now licensed by regional examinations for which this information was not provided.</p>

Reciprocity	<p>The <i>Code of Alabama 1975</i>, Section 34-9-10 authorizes the board to issue an Alabama license to dentists and dental hygienists licensed in another state who have credentials that are determined by the board to meet Alabama's standards. Section 34-9-10 also authorizes the board to issue special purpose licenses that allow licensees of other states to practice in Alabama, providing the other states extend this opportunity to Alabama dentists.</p> <p>The board does not have any reciprocal licensure agreements.</p> <p><i>Code of Alabama 1975</i>, Section 34-9-10</p>
Renewals	<ul style="list-style-type: none"> • Dentists and dental hygienists renew annually, on or before October 1 of each year. • Licenses are automatically suspended if not renewed by January 1 of each year. • Online renewal is not available. <p><i>Code of Alabama 1975</i>, Section 34-9-15(a)</p>
Continuing Education	<p>Dentists – 20 hours annually Dental Hygienists – 12 hours annually</p> <p>Dentists and dental hygienists must have at least 2 hours, each, of cardiopulmonary resuscitation (CPR) training and infectious disease control training every two calendar years.</p> <p>Completion of required continuing education is a prerequisite for renewal of license.</p> <p><i>Code of Alabama 1975</i>, Section 34-9-15(b)</p>
Employees	5 as of June 1, 2011
Legal Counsel	<p>Donna L. Dixon (private attorney under contract) Hendon Coody (private attorney under contract)</p>
Subpoena Power	<p>Yes. To compel the attendance of witnesses and the production of records.</p> <p><i>Code of Alabama 1975</i>, Section 34-9-46</p>

Internet Presence	www.dentalboard.org The board's website contains: <ul style="list-style-type: none"> • Statutory Authority • Administrative Rules • Board Members • Contact Information • History • What's New • Alabama Dental Hygiene Program information • State Licensure Information • Meeting Notices • Minutes of Board Meetings • Alabama Dental Professionals Wellness Committee • Archives • Complaint Form • Related Information • Other links of Interest
Attended Board Member Training	5 board members attended board member training in 2009 and 2011
<u>Financial</u>	
Source of Funds	Licensing and regulatory fees.
State Treasury	No. Funds are maintained in a bank checking account. <i>Code of Alabama 1975</i> , Section 34-9-41
Required Distributions	No statutory requirement.
Unused Funds	Retains unexpended funds. <i>Code of Alabama 1975</i> , Section 34-9-41

SIGNIFICANT ISSUES

Significant Issue 2011-01

In the minutes of the board's April, 2011 meeting, the board expressed an intention to move its offices to Montgomery, Alabama from its present location in Hoover, Alabama. The minutes show that the board adopted a motion "to enter into an emergency contract with Warren & Company, Inc. to provide management services for the operations of the Board which includes the relocation of the Board's Administrative office to Montgomery, Alabama within the contract period." The board entered into the contract with Warren & Company to provide administrative, executive and consulting services at \$18,750 per month until relocation of the board's office to Montgomery, Alabama during the term of the contract. Upon the relocation of the board's office to Montgomery, payments are to increase to \$25,000 per month until expiration of the contract. The contract period is April 15, 2011 through March 15, 2013.

Significant Issue 2011-02

The board is collecting a fee that is not authorized by law. The board assesses and collects an annual monitoring fee from impaired professionals participating in its wellness program. The Board of Dental Examiners established the Alabama Dental Professional Wellness Committee (ADPWC) to promote the early identification, intervention, treatment, and rehabilitation of impaired licensed dentists and dental hygienists under authority of the *Code of Alabama 1975*, Section 34-38-2.

The Alabama Impaired Professionals statute, (*Code of Alabama 1975*, Sections 34-38-1 through 38-34-8) provides that the board's "... functions and responsibilities may include any or all of the following:

- (1) Contracting with providers of treatment programs;
- (2) Receiving and evaluating reports of suspected impairment from any source;
- (3) Intervening in cases of verified impairment;
- (4) Referring impaired professional to treatment programs;
- (5) Monitoring the treatment and rehabilitation of impaired professional;
- (6) *Providing post-treatment monitoring* and support of rehabilitated impaired professional; and ..."

The statute provides that the board may:

"expend such funds as are available to it as deemed necessary to adequately provide for the operational expenses of the Alabama Impaired Professionals' Committee, including, but not limited to, the actual cost of travel, office overhead and personnel expense, and compensation for the members of the committee and its staff; ..."

There is no statutory authority for the monitoring fee the board collects. Neither the Dental Practice Act (*Code of Alabama 1975*, Section 34-9-1 et al) nor the Alabama Controlled Substance Act (*Code of Alabama 1975*, Section 20-2-50 et al) provides authorization for a monitoring fee.

The Attorney General's Opinion No. 87-222 dated June 23, 1987, concluded that:

“Where the Legislature established a sufficiently definite policy, standard or rule an administrative agency may be empowered to deal with the issuing of a license or permit and to fix reasonable fees for such issuance; where the Legislature has not established such a sufficiently definite policy, rule or standard the administrative agency may not be empowered to deal with such issuing of licenses or permits or establishing of fees.”

There must be a legislative basis to the application of a fee (AGO 2002-193).

According to the board’s accounting records, the board has collected the following amounts for monitoring fees:

<u>FY</u>	<u>Amount</u>
2007	\$ - 0 -
2008	\$ 3,100.00
2009	\$ 9,300.00
2010	\$ 6,200.00
	<u>\$18,600.00</u>

Significant Issue 2011-03

According to the board’s newsletter, the board desires to reorganize the Alabama Dental Hygiene Program into a foundation in order to remove it from state regulation and audits by the state. The Alabama Dental Hygiene Program (ADHP) is authorized by the *Code of Alabama 1976*, Section 34-9-26 and is operated as a component of the Alabama Board of Dental Examiners.

The following text is an excerpt from the board’s June 2010 newsletter:

“The Board now feels the need to remove this program from the Board’s direct supervision and place it in an entity governed by the dental community. This will preserve and protect this program from those in the future who may not understand the importance of the ADHP and may seek to abolish it or move it under state government control.

... the Board has decided to pursue moving the ADHP from the Board purview and into a separate foundation. ***The main reason this is being considered is because the ADHP now has to abide by state regulations and be subjected to state audits.***”

[Emphasis supplied]

According to the newsletter, the entity would be run by an executive director and a board of trustees. The trustee would be selected from the dental community as follows:

- A dentist currently seated on the Board of Dental Examiners of Alabama as selected by the Board of Dental Examiners;
- A dentist who previously served on the Board of Dental Examiners as selected by the Board of Dental Examiners;
- The current hygienist seated on the Board of Dental Examiners;
- Two dentists selected at large from the licensed dentists of Alabama;
- Two hygienists selected at large from the licensed hygienists of Alabama.

At its April 8, 2011 meeting, the board allocated the sum of \$5,000 for the establishment of the ADHP into an education foundation.

Significant Issue 2011-04

In two cases involving lawsuits brought against the board by former employees, the courts found that the board is not immune from litigation as an agency of the state because the board is not an agency of the state. Regarding the federal litigation, the board's attorney, Hendon Coody, stated that if the ruling stands, all agencies that get their support from their own licensing fees will be affected. The decisions on these cases are included in the appendices of this report.

State Litigation - In a prior finding, the Examiners of Public Accounts found that the board did not compensate its administrator in accordance with the terms of its contracts with her, resulting in an underpayment of \$10,162.08. The Examiners recommended that the board offer payment to her in this amount, which the board did not do. As a result, the administrator, whose employment with the board was terminated, filed suit in the Circuit Court of Jefferson County in the case *Mary Ann Wilkinson v. Board of Dental Examiners*. The court dismissed the case without prejudice to the state's Board of Adjustment, which hears claims against the state for injury by the state to persons or property. The case was appealed to the Alabama Court of Civil Appeals, which ruled that the board is not a state agency; it is not immune from suit by its employees; and it may not utilize the services of the state Board of Adjustment referred to in the administrator's contract because it is not a state agency. Information provided by the board indicated that a request for rehearing is pending.

Federal Litigation – In this litigation, a former employee brought suit in the United States District Court for the Northern District of Alabama, Southern Division against the board for unpaid overtime in a case entitled *Natalie Versiglio (sic) v. Board of Dental Examiners of Alabama*. The court found that there was nothing in the statutory charter of the board to suggest that the State of Alabama would itself be obligated to pay from its treasury liabilities that may be incurred by the "agency" to third parties, including to unhappy employees, and denied the board's 'Motion to Dismiss' based on Section 11 sovereign immunity of the state against lawsuit. Information provided by the board indicated that a decision is pending in the Eleventh Circuit Court of Appeals, U.S. Courts in the case.

Significant Issue 2011-05

The board did not competitively bid a contract for its executive director and administrative services which is required to be bid under state law, and did not follow the requirements necessary to execute an emergency contract for these services in lieu of the bid process. – Until May 31, 2011, Warren & Company, Inc. provided services to the board under a previous contract that expired May 31, 2011. The board voted in its April, 2011 board meeting to enter into an emergency contract with Warren & Company, Inc. to continue these services without rebidding the contract. The emergency contract period begins April 15, 2011 to extend through March 15, 2013. The contract provides for contractor to provide administrative, executive and consulting services, to supervise the day to day operations of the board, and to act as the administrative officer of the board. The contract indicates an eventual relocation of the board's

administrative office to Montgomery, Alabama. The contract states that the total cost is not to exceed \$500,000.

The *Code of Alabama 1975*, Section 41-16-20 requires all contracts of whatever nature for labor, services, work ... or other nonprofessional services, involving seven thousand five hundred dollars (\$7,500) or more, to be let by free and open competitive bidding. The Attorney General in his Opinion 2002-078 stated that, "Contracts between state licensure boards and a consultant for the services of an executive director, administrative staff, equipment, and/or physical facilities are subject to the Competitive Bid Law." The competitive bid law contains an emergency provision located in the *Code of Alabama 1975*, Section 41-16-23 whereby a contract can be let without competitive bids in an emergency and which provides that, "In case of emergency affecting public health, safety or convenience, so declared in writing by the head of the institution or state agency involved, setting forth the nature of the danger to public health, safety or convenience involved in delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. Such action and the reasons therefor shall immediately be made public by the awarding authority..

The board executed the emergency contract under authority of the *Code of Alabama 1975*, Section 41-16-23, but did not declare in writing the nature of the emergency or make the action and its reasons public, as required by the emergency provision.

Significant Issue 2011-06

The board did not submit a contract for legal services to the Contract Review Permanent Legislative Oversight Committee as required by state law. The board entered into a contract with a private attorney (Hendon Coody) to provide litigation assistance to the board. Payment terms are \$150 per hour plus expenses and reimbursement for travel expenses at rates allowed by law. There is no maximum amount stated for compensation or expenses. The contract period is October 1, 2010 through September 30, 2012. We were unable to find records showing that the contract was submitted to the Contract Review Permanent Legislative Oversight Committee for review.

The *Code of Alabama 1975*, Section 29-2-41.2.(b) states that, 'Notwithstanding any other provisions of this article, all contracts for employment of an attorney to provide legal services, including contracts involving an attorney providing legal services under an agreement with the Attorney General, shall be reviewed by the committee. The *Code of Alabama 1975*, Section 29-2-41 provides that such contracts not reviewed by the committee are void at inception.

Significant Issue 2011-07

An attorney employed by the board resigned her employment in order to enter into a contractual relationship with the board as a private attorney. This process has encountered procedural difficulties. In a letter to the board dated May 11, 2011, Dr. Donna Dixon, who is a dentist and an attorney, resigned her employment with the board effective June 1, 2011 in order to continue her relationship with the board as contract counsel. At the time, Dr. Dixon's salary was \$85,000 annually.

On May 20, 2011, the board signed a two-year contract to be effective June 1, 2011 with Dr. Dixon doing business as a private law firm at \$270,000 per year, payable in twice monthly installments of \$11,250 each, to act as the board's legal counsel and to represent the board in litigation. The signed contract was submitted to the Contract Review Permanent Legislative Oversight Committee for review at the committee's July, 2011 meeting, as required by the *Code of Alabama 1975*, Section 29-2-41.2.(b). However, the contract was withdrawn prior to the meeting when the Attorney General did not approve the attorney's appointment as deputy attorney general. The *Code of Alabama 1975*, Section 41-16-72(1) requires that attorneys retained to represent the state in litigation must be appointed by the Attorney General. At that point the contract could not go forward. Such contracts that are not reviewed by the committee are "void ab initio [at inception], as provided by the *Code of Alabama 1975*, Section 29-2-41.

Subsequently, the board entered into an emergency contract with Dr. Dixon at \$150/hour for 60 days under authority of the *Code of Alabama 1975*, Section 29-2-41.1. The stated contract period is July 1, 2011 to September 1, 2011. The contract also contains a provision for utilization of a paralegal, who is not named, at \$50/hour, and a provision for reimbursement of expenses. Although the stated contract period is for 60 days, the contract contains provisions to limit the contract to \$245,000 for one year or \$489,000 for two years. The contract limits Dr. Dixon's compensation to \$150,000, the paralegal's compensation to \$50,000, and expenses to \$45,000 "during each contract year".

The emergency on which the contract is based was described in the following manner in the board's July 8, 2011 letter of declaration of the emergency to the governor, which is required by the *Code of Alabama 1975*, Section 29-2-41.1. "The Board voted at its July 7, 2011 Board meeting to enter into an emergency legal services contract with Dr. Donna L. Dixon, The Dixon Law Firm, PC, due [to] the Board not having current legal counsel to prosecute disciplinary cases for the Board. By the Board not having legal counsel to address complaints and disciplinary procedures, it would not be upholding its statutory authority to protect the health, safety and welfare of the citizens of the State of Alabama. This emergency began on July 1, 2011 and will end on August 31, 2011 when these services have been procured through the normal contractual procedures. The estimated cost of the emergency will be \$45,000."

The *Code of Alabama 1975*, Section 29-2-41.1 provides that, "In case of an emergency adversely affecting public health, safety, security, or the economic welfare of the state, so declared in writing to the Governor by the head of the institution or agency involved, setting forth the nature of the danger to public health, safety, security or the economic welfare of the state, contracts may be let to the extent necessary to meet the emergency without review by the committee. Any contract let pursuant to this section involving an emergency adversely affecting the economic welfare of the state shall be let for a period of not more than 60 days during which time the committee shall review a contract for a longer period of time if such services are required beyond the 60-day limit hereby imposed."

Significant Issue 2011-08

The board required an applicant to enroll and complete the Alabama Dental Hygiene Program in order to be eligible to sit for the dental hygiene licensure examination; although, the applicant had previously successfully completed the program. This action appears to be outside state law and the board's rules.

The *Code of Alabama 1975*, Section 34-9-26 provides that, "Each applicant for examination and license as a dental hygienist shall be a graduate of a school of dental hygiene which has been approved by the board, or in lieu thereof, shall have served as a dental assistant for a period of time established by board rule and shall have served at least one year as a dental hygienist trainee under a training permit issued by the board to a qualified dentist practicing in this state in accordance with the dental hygienist training program established by the Board of Dental Examiners of Alabama." The board's administrative rule 270-X-3 -.03– Education Requirement for Examination – requires that applicant be a graduate of either a board-approved school of dental hygiene or a graduate of the Alabama Dental Hygiene Program (ADHP), which is a training program established by the board. Neither the rule nor the dental licensing law provides that qualification by completion of the dental hygiene training program will lapse if not exercised within a specified period of time. Minutes of a meeting of the board reflect that the applicant was a 2000 graduate of the Alabama Dental Hygiene Program.

Significant Issue 2011-09 – The Board improperly extends dental licenses issued mid-year to expire at the end of the next year rather than at the end of the current year, as required by law. – At its September 2010 meeting, the board ratified a policy stating that the expiration date for a license granted by examination is the last day of the [issuance] year unless the license was granted during preparation for annual renewals, in which case the expiration date is the last day of the following year.

According to board's staff, preparation for annual renewals begins on August 1, and licenses granted from mid-July forward do not expire until December 31 of the following year. This policy has not been placed in the board's administrative rules, as required for board policies by the state's Administrative Procedure Act. However, it does not appear to be a valid policy for incorporation into the board's rules because it is in conflict with state law.

The *Code of Alabama 1975*, Section 34-9-15 requires that all licensed dentists must file for annual registration of their license on or before October 1 and any license not renewed before January 1 is automatically suspended. The annual registration authorizes the licensee to practice dentistry for a period of one year. The license period is from January 1 to December 31 of each year.

The board's *Administrative Code* 270-X-2-.07 requires annual renewal of licenses and automatic suspension of licenses not renewed before January 1, without exception.

In summary, the board is practicing a policy that is not authorized in the law or in its own administrative rules.

Significant Issue 2011-10

Complainants were not satisfied in their dealings with the Board of Dental Examiners.

Thirty-two of the thirty-eight (84 %) complainants who responded to our survey stated that they were not satisfied with their dealing with the Board of Dental Examiners. Their comments included unsatisfactory opinions regarding the courtesy and or knowledge of the board's staff and about whether they were notified of the result of the board's investigation of their complaint.

The board's stated complaint procedure includes acknowledging the receipt of a complaint and notifying the complainant of the resolution of the complaint. Twenty-eight of the thirty-nine (72%) responding complainants acknowledged being notified of the result of the board's investigation of their complaint but they were not satisfied with the resolution. Our review of board minutes showed that the board often did not find sufficient evidence to sustain a complaint. According to information posted on the board's website, the board does not entertain complaints involving fee disputes or allegations of rude behavior by a licensee.

According to the board's legal counsel, Dr. Donna Dixon, the board's ability to act is limited because, "The term gross negligence as it exists in the statute requires that the board prove intent to harm on the part of the licensee. This is a near impossible bar to scale". The *Code of Alabama 1975*, Section 34-9-18 lists the grounds on which disciplinary action can be taken. Subsection (a)(6) states that disciplinary action can be taken if the offending dentist "Is guilty of gross negligence, as defined by the board, in the practice of dentistry or dental hygiene."

Significant Issue 2011-11

The board is concerned about the proliferation and operation of non-profit dental operations. Four of the six members who responded to our survey cited the proliferation of non-profit dental organizations, and ownership of dental facilities by non-dentists as the most significant issue for the board. At the time of the survey, the board had jurisdiction over the individual dentists and dental hygienists working for nonprofit mobile clinics but not over nonprofit mobile clinic facilities. According to the board's records, there were three (3) mobile dental clinic facilities registered with the board as of February 2011.

Note: Act 2011-571, which is included in the appendices of this report, clarified and amended the board's scope of authority with respect to the mobile clinics. Our survey of the board occurred before passage of the act, and therefore the results of the survey do not include the effect of passage of the act on the board's concerns.

STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES

The following findings from previous examinations remain unresolved:

Prior Finding 2000-01

During the examination for the period ended September 30, 2000, we found instances in which out-of-state travel claims were not supported by itemized receipts for meal purchases. Credit card receipts were presented without indication of what was purchased or how many were served. Also, the unallowable cost of alcoholic beverages was claimed and paid. We

recommended that itemized receipts accompany claims for reimbursement of out-of-state travel expenses and that claims be scrutinized before payment is made.

In the next examination, discrepancies in claims for reimbursement for out-of-state travel expense continued. Reimbursements for travel expenses to board members included the following discrepancies: (*Code of Alabama 1975*, Section 36-7-21)

- Four claims lacked proof of the required Governor's approval for the travel out of state.
- Five contained unallowable expenses for alcohol, for compensation on a day not authorized for travel, and for the expenses of persons other than the traveler. When notified, the travelers repaid the unallowable expenses.
- Three claims were not supported by itemized receipts for meals and beverages.
- One claim showed that the mode of transportation used was not the least costly. When notified, the traveler refunded the additional cost to the board.

We recommended that claims for travel expenses should not include expenses incurred for persons other than the traveler. The least costly mode of transportation should be used for travel. Alcoholic beverages should not be paid for with board funds. Claims for travel expenses should be presented by board members only for days authorized for travel. All claims for reimbursement of travel expenses should be audited by designated personnel for compliance with legal requirements prior to payment. Claims that do not comply should not be paid.

Prior Recommendation (most recent previous examination)

The board should establish procedures for review and approval of each claim for travel expense reimbursement to ensure compliance with statutory requirements.

Current Status

During the current examination ending September 30, 2010, discrepancies involving payment of travel claims continued. Sixty-nine (69) travel claims selected for testing of which 60 contained errors. During FY 2010, an incorrect mileage reimbursement rate was often utilized when computing amounts due the traveler.

Prior Finding 2001-01

During the previous examination (prior to fiscal year 2001) we found numerous errors in accounting for employee leave and recommended that time and attendance reports and leave balances be reviewed for accuracy. This condition remained unchanged in the period covered by the current examination. We noted that employees were maintaining their own leave balances without supervision or verification. During this examination (last examination), we found the following discrepancies:

- Two employees were accruing annual leave at a higher rate than for which they were eligible. One employee who was due for an increase in the rate of accumulation of annual leave did not receive the increase. (*Code of Alabama 1975*, Section 36-26-35(a))

- Two employees accrued leave during a leave accrual period in which they were not on the payroll sufficient time to earn leave. Employees must work 80% of the leave accrual period in order to earn leave.
- A personal leave day was recorded for one employee who was not entitled to receive it.
- The Board granted six weeks of paid maternity leave to an employee. State employees do not receive maternity leave and must use annual or sick leave.
- One employee transferred accumulated sick leave from prior employment. No documentation was available to support the balance transferred or its acceptance by the Board.
- Although the board's offices remain open on seven of the thirteen legal state holidays, employees who worked on those holidays did not receive a compensatory day of leave or a day's pay in lieu of the holiday. State law specifies state holidays to be observed by the closing of all state offices. State offices may remain open on holidays; however, any state employee working on a state holiday must receive a day of compensatory leave or paid compensation in lieu of the holiday. (*Code of Alabama 1975*, Section 1-3-8)

Prior Recommendation (most recent previous examination)

It is again recommended that employee timesheets be audited to verify proper recording and calculations. Leave accumulation and usage should also be audited to verify proper recording and calculations. Auditing of completed timesheets for correct leave accumulation and usage should be performed centrally by designated personnel. Leave should be awarded and used in accordance with state law and regulations of the State Personnel Department. Discrepancies in leave balances should be corrected.

Current Status

Each employee continues to maintain his or her own record of leave accumulation and usage as the board's official record. Timesheets prepared by employees, including those for hourly-paid employees, were not reviewed prior to processing payroll. Timesheets are not approved by supervisory personnel.

A review of the current leave balances revealed errors in employees leave balances.

1. There was one instance where an employee carried forward his leave balance from year to year without a required adjustment for excess leave. The *Code of Alabama 1975*, Section 36-26-35 limits annual leave carry over at the end of the calendar year to 480 hours. Additionally, this employee was due for an increase in the rate of accumulation of annual leave but did not receive the increase.
2. One employee began to accrue annual leave at a higher rate for which she was not eligible.
3. One employee was not paid for total hours worked resulting in an underpayment of \$563.50 due to improper calculation by the financial secretary.
4. A termination payment was made to one employee whose total leave (annual and compensatory) did not reflect the total hours as stated on the employee timesheet; resulting in an overpayment of \$256.50.

Prior Finding 2003-01

Bank statements were not in balance with the board's accounting records. The board uses proprietary software (QuickBooks) as its accounting system and maintains bank two accounts; an operating account and a money market account in Hoover, Alabama. Bank statements are reconciled to the check register monthly. However, there is a consistent discrepancy between the bank balance and the board's records that remains unresolved and continues to grow. At September 30, 2003, the bank balance exceeded the balance in the board's records by over \$10,000. Staff had not resolved the discrepancy and was unable to explain it.

In the current examination, we noted that the discrepancy continued and had not been resolved. As in prior examinations, the reported reconciled cash balance was based upon amounts the Examiners of Public Accounts extracted from the accounting records and continued to differ from the bank balance. We noted un-cleared transactions regarding both checks and payments and deposits and credits in the board's accounting records that have remained unresolved for several years that apparently contribute to this discrepancy.

Prior Recommendation

The board should clear all outstanding transactions recorded in the board's accounting records and resolve all discrepancies.

Current Status

During the current examination period ended September 30, 2010, the board reported a reconciled cash balance based upon an incomplete list of such amounts as we [the Examiners] could extract from the accounting records. The board's records continue to differ from the bank balance. We continued to observe un-cleared and unresolved transactions regarding checks and payments in the board's accounting records that have remained unresolved for several years that apparently contribute to this discrepancy. Reconciliations continue to not be performed in a timely manner. In addition, a journal entry posted in a prior year is continually used as a reconciling item on each monthly reconciliation.

Prior Finding 2007-04

Due to improper calculation of compensatory time and lack of oversight of time reports, two employees had negative balances of earned compensatory time as a result of using more compensatory time than earned.

Prior Recommendation

The board should review and verify the accuracy of employees' time reports prior to payment. Compensatory time should be computed according to the requirements of the federal Fair Labor Standards Act. Use of compensatory time should be limited to the earned balance.

Current Status

For the examination period ending September 30, 2010, two of the board's employees held positions that were subject to the Federal Fair Labor Standards Act. According to the timesheet reviewed for one employee, the employee accrued compensatory time at straight time instead of time and one half, which is a practice in conflict with the Fair Labor Standards Act. When notified of the discrepancy, the financial secretary adjusted the employee's compensatory time to

reflect all hours earned in excess of 40 hours per week at time and one half. A second employee submitted compensatory time on his timesheet. We could not determine from available records if the employee earned the submitted compensatory time at straight time or time and one-half.

Employee timesheets are submitted to the financial secretary without being approved by supervisory personnel. The actual number of hours worked are not verified by the financial secretary or by supervisory personnel.

Prior Finding 2007-06

The board did not follow state law in its procurement of goods and services. Goods and services not considered professional services are required to be competitively bid under the requirements of the *Code of Alabama 1975*, Section 41-16-20, if the cost of such services exceeds \$7,500 in a fiscal year. The procurement of professional services is not required to be bid but is required to be advertised to the professional community and processed in accordance with the requirements of the *Code of Alabama 1975*, Section 41-16-72. The board purchased the following goods and services without regard to these requirements.

Goods and Services not Bid

Vendor	FY 2004	FY 2005	FY 2006	FY 2007	Purpose
The Printing House	\$37,024.74	\$32,977.88	\$33,131.42	\$34,835.37	Printing and mailing
Benco Dental			\$26,128.40	\$33,583.66	Dental equipment

Professional Services not Advertised

Vendor	FY 2004	FY 2005	FY 2006	FY 2007	Purpose
				\$70,127.69 (technical support	Assist with selecting hardware to upgrade the Board's computer and database
Data House Inc., LLC	\$15,597.31	\$82,462.96	\$127,740.91	\$ 67,947.14)	
Thomas Weatherford, DMD	\$ 6,529.40	\$ 6,258.10	\$ 6,260.68	\$ 11,045.66	Lecture services

Prior Recommendation

The board should purchase goods and services and procure professional services in the manner prescribed by state law.

Current Status

The condition continues, as shown below.

Goods and Services not Bid

Payments				
Vendor	FY 2008	FY 2009	FY 2010	FY 2011*
Data House Inc., LLC	\$12,440.00	\$15,167.50	\$23,215.52	\$9,259.25

The board continued to engage Data House Inc., LLC for on-going computer support capacity without bidding these services.

The board also continued to engage providers of professional services without regard to the requirements of the *Code of Alabama 1975*, Section 41-16-72, as shown below.

Professional Services not Advertised

Payments				
Vendor	FY 2008	FY 2009	FY 2010	FY 2011*
Steve Windom ¹		\$36,000.00	\$44,000.00	\$32,000.00
Hullett, Kellum & McKinney ²		\$22,400.00	\$12,900.00	
Thomas Wetherford, DMD ³	\$11,640.00	\$11,902.50	\$ 9,516.25	\$ 8,912.50

*As of May 2011

¹The board contracted with Steve Windom for consulting services. Windom's contract expired December 31, 2010. A current contract was requested but not provided. According to minutes of the board's February 2011 meeting, the contract was approved for an additional year.

²The board contracted with Hullett, Kellum & McKinney to audit its financial statements.

³The board continued to utilize Dr. Weatherford for lecturing.

Prior Finding 2007-11

There was inadequate segregation of duties and internal control over financial transactions. The financial secretary opened mail containing receipts (checks or money orders); recorded the funds in the agency's database; recorded the receipts in the agency's records; made deposits to the board's checking account; and reconciled the monthly bank statements. Amounts received through the mail were not logged, and according to the financial secretary, receipts were not restrictively endorsed when received. The financial secretary also managed payroll and personnel records. The only oversight or review of these transactions was that the administrative secretary authorized disbursements and signed checks. This condition unnecessarily increases the risk that loss or misuse of state funds could occur without detection. Increased risk occurs when one person performs incompatible duties. Duties are considered incompatible if a single person can carry out and conceal errors and/or irregularities in the course of performing day-to-day activities. Assignments of duties should provide a crosscheck of responsibilities to avoid incompatibilities.

Prior Recommendation

No person should have complete control over any financial transaction from initialization to completion. Employees who receive amounts paid to the board or who reconcile bank statements should not be able to edit or make entries to the accounting records. Employees who receive amounts paid to the board should not reconcile bank statements. Employees who reconcile bank statements should not have authority to edit or make entries into the accounting records. A log of all receipts should be maintained and reconciled to deposits. Checks should be restrictively endorsed when received. The same employee should not both set up new employees and process payroll. Any necessary deviation from these requirements should be compensated by increased, documented supervisory review.

Current Status

For the examination period ending September 30, 2010 the financial secretary continues to perform all of these functions with little or no oversight.

Prior Finding 2007-016

Since 2003, the board had not submitted an audit report prepared by an independent certified public accountant, as required by law.

The *Code of Alabama, 1975* Section 34-9-42 requires that an annual report required to be compiled by the board's secretary-treasurer "shall have attached thereto a certified report and audit made by a certified public accountant of the State of Alabama. A copy of said report and audit shall be filed of record in the office of the Department of Finance of the State of Alabama, and a copy shall be retained by the secretary-treasurer."

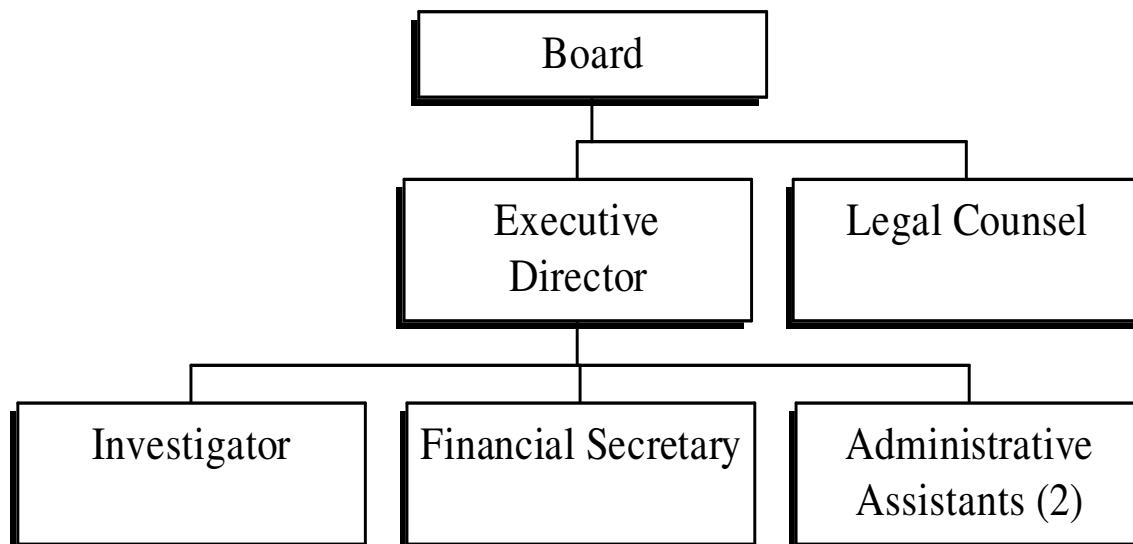
Prior Recommendation

The board should submit an annual audit prepared by a certified public accountant to the Department of Finance each year. A copy should be retained by the board.

Current Status

The secretary/treasurer did not compile annual reports during the examination period. The board caused an independent audit to be prepared by a certified public accountant for FY 2008, but not for FYs 2009 and 2010.

ORGANIZATION



PERSONNEL

The board has a contract with Keith Warren, Warren & Company, to serve as the executive director effective April 15, 2011. Mr. Warren will also provide administrative, executive and

consulting services at \$18,750 per month until relocation of the board's office to Montgomery, Alabama during the term of the contract. Upon the relocation of the board office to Montgomery he will be reimbursed \$25,000 per month until expiration of the contract. The total contract amount is not to exceed \$500,000. The contract is effective April 15, 2011 through March 15, 2013.

The board also employs four full-time at-will employees who are not employed within the state's Merit System. The employees receive holidays, longevity pay, annual and sick leave in the same manner as state employees in the Merit System.

Employees

Title	Number	Race	Gender
Executive Director	1	White	Male
Investigator*	1	White	Male
Financial Secretary	1	White	Female
Administrative Assistants	2	White	Female
Total	5		

*The *Code of Alabama 1975*, Section 34-9-43(9)(8) requires the board's investigators to comply with the Peace Officers' Minimum Standards and Training Act to exercise the powers of a peace officer in investigating alleged violations of the drug or controlled substances laws by persons licensed pursuant to this chapter, including the powers of arrest and inspection of documents.

Consultants

Dr. Michael Garver serves as director of the Alabama Dental Professionals Wellness Committee under an annual contract with the board. The current contract expires September 30, 2011. The contract provides for annual compensation of \$72,440 paid in equal monthly installments of \$6,036.67. The committee under Dr. Garver's direction is comprised of recovering dental professionals. Dr. Garver reports to the board during executive sessions.

Steve Windom, LLC of Montgomery, Alabama provides unnamed consulting services to the board. Total compensation for one year is \$48,000 paid in equal monthly installments of \$4,000 each month beginning January 1, 2010. An additional \$2,000 may be paid for reasonable expenses. The contract expired December 31, 2010. According to minutes of the board's February 2011 meeting, the contract was approved for an additional year. A copy of the extended contract was requested but not provided.

Legal Services

Dr. Donna Dixon, who is a dentist and an attorney, was a former employee of the board at \$85,000 annually until her resignation June 1, 2011. She currently serves as legal counsel for the board as a private attorney under an emergency contract ending September 1, 2011 at \$150/hour, assisted as required by an unnamed paralegal at \$50/hour plus reimbursement of expenses, including travel expenses. The board has expressed an intention to continue this type of relationship with Dr. Dixon through normal contract procedures.

Hendon Coody, a Deputy Attorney General in private practice in Montgomery, Alabama, provides litigation assistance to the board under a professional services contract. Payment terms are \$150/hour plus expenses, including travel expenses. The contract period is October 1, 2010 through September 30, 2012. We were unable to find any record that this contract was reviewed by the Contract Review Legislative Oversight Committee, as required by law. Such contracts are void at inception if not reviewed by the committee.

Matthew Y. Beam, an attorney in private practice in Montgomery, Alabama, serves as hearing officer in administrative/disciplinary proceedings. Payment terms are \$100 per hour, not to exceed \$25,000 for services as hearing officer and up to \$5,000 for reimbursed expenses for the contract period. The contract period is from April 1, 2010 through September 30, 2011.

Dana H. Billingsley, an attorney in private practice in Montgomery, Alabama, serves as hearing officer in administrative/disciplinary proceedings. Payment terms are \$100 per hour, not to exceed \$25,000 for services as hearing officer and up to \$5,000 for reimbursed expenses for the contract period. The contract period is from April 1, 2010 through September 30, 2011.

H. E. “Chip” Nix, Jr., an attorney in private practice in Montgomery, Alabama, serves as hearing officer in administrative/disciplinary proceedings. Payment terms are \$100 per hour, not to exceed \$25,000 for services as hearing officer and up to \$5,000 for reimbursed expenses for the contract period. The contract period is from April 1, 2010 through September 30, 2011.

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee as of June 2011– 1,266

Number of Persons per Licensee in Alabama and Surrounding States

	Population⁽¹⁾	Number of Dentists⁽²⁾	Persons Per Dentist	Number of Hygienists⁽²⁾	Persons Per Hygienist
Alabama	4,779,736	2,446	1,954	3,885	1,230
Florida	18,801,310	11,814	1,591	12,288	1,530
Georgia	9,687,653	5,568	1,740	6,646	1,458
Mississippi	2,967,297	1,481	2,004	1,450	2,046
Tennessee	6,346,105	3,529	1,798	4,022	1,578

⁽¹⁾ 2010 U.S. Census Bureau

⁽²⁾ Dentists and Dental Hygienists as of May 2011

Operating Disbursements per Licensee – \$179 (2010 fiscal year)

Notification to Licensees of Board Decisions to Amend Administrative Rules

The board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the *Alabama Administrative Monthly*, and

holding of public hearings before adopting proposed rules. Information regarding changes of laws and rules are also posted on the board's Internet website.

Evaluations/ Inspections

The board performs initial evaluations of facilities, equipment and dental personnel for first time applicants for general anesthesia and parenteral [intravenous] sedation permits. The evaluation is done by a team of three dentists appointed by the board. According to the board's staff, a re-evaluation of the facility, equipment and dental personnel is conducted about every five years, or more frequently if circumstances dictate (*Code of Alabama 1975*, Section 9-43-60).

The board may require an on-site inspection of personnel, the facilities, and equipment to determine if requirements have been met, prior to issuance of a permit for oral conscious sedation or when an oral surgeon begins to practice at a facility.

The board also inspects mobile dental facilities and portable dental operations as part of the initial permitting process. The board's in-house investigators are assigned to conduct this inspection (*Code of Alabama 1975*, Section 34-9-6.1).

The board additionally inspects locations submitted by the Dean of the University of Alabama at Birmingham, School of Dentistry where undergraduate students or unlicensed residents may be assigned as part of educational requirements. The board may withdraw its 'approved' status if the clinical dental facility does not meet standards.

A board member is assigned to conduct an on-site inspection to determine whether the instruction at a training institution satisfies the requirements for a dental assistant program. If the institution fails, the board may deny 'approved' status and provide a written notice. Evaluations records are kept in the individual licensee files rather than centrally. Consequently, statistical information on evaluations/inspections for the past four years was not readily available.

COMPLAINT HANDLING

Board Rules 270-X-5.05 through 270-X-5-10 provide the procedures for documentation, receipt and investigation of complaints relating to board licensees. The board does not have jurisdiction over fee disputes between licensees and patients.

Initial Contact/Documentation	Complaint intake is by mail, fax, or email on the board's complaint form, except for reports of licensee impairment, which are received on a published toll free number for contacting the Alabama Dental Professionals Wellness Committee. Any member of the board or its staff may submit complaints. A letter acknowledging receipt of the complaint is sent to the complainant at the time the complaint is assigned a case number, which is upon receipt. The board does not have jurisdiction over fee disputes.
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Anonymous Complaints	The board does not accept anonymous complaints. All complaints must be notarized and signed, except that anonymous complaints relating to cases involving possible impairment of licensees are referred to the Wellness Committee.
Investigative Process	The licensee named in the complaint is notified of the complaint by mail and a response may be requested. The complaint is referred to an investigative team comprised of one board member, the chief legal counsel, the board's investigator, and an administrative assistant. The board member involved in investigating the complaint does not vote when the full board considers the complaint.
Probable Cause Determination	<p>The investigative team reviews the complaint and may require any or all of the following:</p> <ol style="list-style-type: none"> 1. Letter of explanation from the person named in the complaint. 2. Review of the patient treatment records, radiographs, financial history, and/or insurance records from the person named in the complaint or any prior or subsequent dental provider of the patient. 3. Interview of any individuals associated or named in the complaint. <p>The board member on the investigative team presents a report of the investigative findings to the full board with his/her recommendations</p>
Resolution without Formal Hearing	The board is subject to the Alabama Administrative Procedure Act (<i>Code of Alabama 1975</i> , Sections 41-22-1 through 41-22-27) and may resolve issues by negotiated settlement. The board's attorney, if requested by the licensee named in the complaint, will discuss with the board a proposal from the licensee. During a board meeting, the attorney can authorize an executive session to discuss settlement of pending cases. In executive session, the attorney will present the settlement or proposal from the licensee for the board's consideration. The board will either accept the terms of the settlement or proposal or define terms of a settlement for the attorney to communicate to the offending licensee. If accepted by the licensee a consent order is prepared. Matters involving impairment may be resolved through a consent order at the request and with the advocacy of the Alabama Dental Professionals Wellness Committee.

Formal Hearing	The board utilizes the services of three hearing officers. The hearing officer who presides at the hearing rules on questions of evidence and procedure. The board may examine any witnesses called by either party. The board may in an emergency situation, when danger to the public health, safety and welfare requires, suspend the license of a dentist or dental hygienist without a hearing or with an abbreviated hearing.
Notification of Resolution to the Complainant	Complainants and licensees are notified in writing of the resolution of the complaint.

**Schedule of Complaints Resolved
2007 through 2011 FY**

		Year/Number Resolved					
FY	# Received ⁽¹⁾	2007	2008	2009	2010	2011 ⁽²⁾	Unresolved
2007	122	63	27	22	7	0	3
2008	107		45	45	6	7	4
2009	94			52	37	4	1
2010	56				33	15	8
2011 ⁽²⁾	18					7	11

⁽¹⁾ Consumer Complaints - Excludes those initiated by the board for untimely renewal of licenses and Wellness Committee Cases

⁽²⁾ Complaints information through April 26, 2011.

Source of data: Board staff

Average Time to Resolve Complaints 159 business days

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

Qualified dentists desiring to prescribe or dispense controlled substances must be certified by both the U S Drug Enforcement Agency and the Alabama Board of Dental Examiners.

SMART GOVERNING

The board operates from a bank checking account and is not subject to Department of Finance regulations or the state's SMART Governing procedures. Consequently, the board does not participate in reporting its performance according to SMART requirements.

FINANCIAL INFORMATION

Source of funds – The board is funded entirely from the licensing and regulatory fees and fines that it collects.

Accounts Description(s) – The *Code of Alabama 1975*, Section 34-9-41 requires that the secretary-treasurer [of the board] shall deposit to the credit of the board all funds paid to the board in a bank selected by its members. The board maintains two accounts at First Commercial Bank in Hoover, Alabama:

- An Operating Account – into which are deposited all operating receipts from its licensing and regulatory activities and from which all operating expenses are paid.
- A Money Market account – used hold funds not immediately needed for operations.

The board also collects a \$10 annual fee from licensees who have a controlled substance registration license. The fees are submitted to the Department of Health in accordance with the *Code of Alabama 1975*, Section 20-2-217. The following amounts were transferred to the Department of Public Health

2007	2008	2009	2010
\$19,010	\$19,410	\$19,170	0 ¹

¹ Transfer was delayed and combined with the 2011 transfer of \$39,690.

Schedule of Fees

All fees and amounts are authorized by the *Code of Alabama, 1975*, Section 34-9-16. The board is exempted by law from the rulemaking requirements of the Administrative Procedure Act in establishing the amounts to be collected.

FEE TYPE/PURPOSE	AMOUNT AUTHORIZED	AMOUNT COLLECTED
Dental Examination Application Fee	\$200 – \$750	\$300
Dental Examination Fee	\$100 – \$2,500	\$100
Dental Examination Materials Fee	\$200 – \$500	(1)
Dental Licensure by Credentials Application Fee	\$100 – \$4,000	\$4,000
Dental Licensure by Regional Exam Application Fee	\$100 – \$1,000	(2)
Special Purpose Licensure Fee	\$200 – \$750	(2)
Dental Annual Registration Fee	\$130 – \$500	\$200
Dental License Reinstatement Penalty	\$250 – \$500 plus accrued registration fees- maximum of 5 years	\$250 – \$500 plus accrued registration fees- maximum of 5 years
Alabama Dental Hygiene Program Application Fee	\$50 – \$500	\$25

FEE TYPE/PURPOSE	AMOUNT AUTHORIZED	AMOUNT COLLECTED
Alabama Dental Hygiene Training Permit Fee	\$0 – \$450	\$200
Alabama Dental Hygiene Training Education Fee	\$175 – \$600	\$250
Alabama Dental Hygiene Program Instructor Certification Course Fee	\$75 – \$200	\$75
Alabama Dental Hygiene Program Instructional Materials Fee	\$500 – \$950	\$85
Dental Hygiene By Regional Exam Application Fee	\$55 – \$75	(2)
Dental Hygiene Examination Application Fee	\$50 – \$500	(2)
Dental Hygiene Examination Fee	\$100 – \$600	\$125
Dental Hygiene Examination Materials Fee	\$100 – \$400	\$100
Dental Hygiene Licensure by Credentials Fee	\$0 – \$2,000	\$2,000
Dental Hygiene Annual Registration Fee	\$55 – \$75	\$65
Dental Hygiene License Reinstatement Penalty	\$100 – \$200	\$100
License Certificate Fee	\$25 – \$500	\$25
Duplicate License Fee	\$25 – \$150	\$25
Dental Faculty Teaching Permit Fee	\$150 – \$350	\$150
Alabama Controlled Substance Permit Fee ⁽³⁾	\$125 – \$400	\$125
Alabama Controlled Substance Permit Renewal Fee ⁽³⁾	\$100 – \$400	\$125
General Anesthesia Permit Fee	\$900 – \$1,500	\$900
General Anesthesia Permit Renewal Fee	\$200 – \$750	\$200
Parenteral Sedation Permit Fee	\$900 – \$1,500	\$900
Parenteral Sedation Permit Renewal Fee	\$200 – \$750	\$200
Oral Conscious Sedation Permit Fee	\$100 – \$250	\$100
Oral Conscious Sedation Permit Renewal Fee	\$50 – \$250	\$50
Mobile Dental Application/Inspection Fee	\$750 – \$1,500	(2)
Mobile Dental Renewal Fee	\$250 – \$1,500	(2)
Directory with postage ^(R)		\$7
Drug Inventory /Dispensing Log with postage ^(R)		\$7

^(R) By administrative rule 270-X-5-.07

⁽¹⁾ The board no longer administers the dental licensure examination in-house. Effective October 2009, the board began accepting national and regional dental examination for licensure in lieu of self-administration.

⁽²⁾ Specific amount not set.

⁽³⁾ Collected by the board for transfer to the Department of Public Health for the development, implementation, operation, and maintenance of the controlled substances prescription database pursuant to *Code of Alabama 1975*, Section 20-2-217.

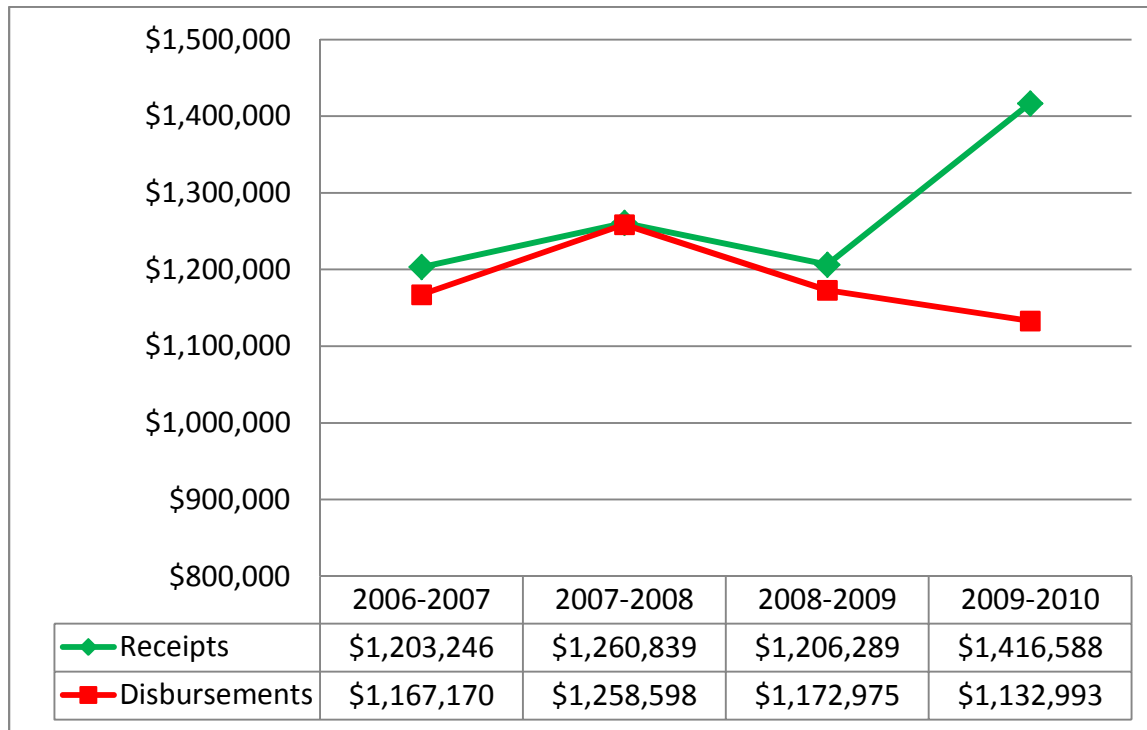
Schedule of Receipts, Disbursements, and Balances

October 1, 2006 through September 30, 2010

	2009-2010	2008-2009	2007-2008	2006-2007
<u>Receipts</u>				
ADHP	\$ 100,350.00	\$ 78,155.00	\$ 157,913.00	\$ 152,805.00
Licensing Fees	1,275,085.00	1,021,065.00	986,790.00	928,808.60
Fines and Penalties	31,750.00	65,650.00	92,500.00	96,232.00
Interest Income	1,492.02	2,382.44	7,676.91	10,690.05
Other Income	28,991.00	39,736.65	18,089.37	15,860.53
Total	1,437,668.02	1,206,989.09	1,262,969.28	1,204,396.18
<u>Disbursements</u>				
Personnel Costs	381,018.04	411,619.46	367,209.54	352,418.02
Employee Benefits	112,641.77	102,267.44	87,566.29	88,299.69
Travel In-State	29,563.95	39,782.59	46,987.27	43,625.63
Travel Out-of-State	25,193.05	24,280.10	12,244.38	27,437.33
Repairs and Maintenance	2,335.20	495.00	467.00	458.83
Rentals and Leases	98,891.82	84,648.13	72,063.24	52,241.73
Utilities and Communications	40,750.96	22,536.59	30,449.95	19,561.58
Professional Services	302,479.38	342,719.72	354,963.87	332,510.04
Supplies, Materials and Operating Expenses	134,306.88	135,124.23	238,579.48	224,390.66
Transportation Equipment Operations	5,812.08	9,501.59	16,667.98	11,314.50
Transportation Equipment Purchases	-	-	18,899.00	-
Other Equipment Purchases	-	-	-	14,912.01
Grants and Benefits *	-	-	12,500.00	-
Total	1,132,993.13	1,172,974.85	1,258,598.00	1,167,170.02
Excess of Receipts over Disbursements	304,674.89	34,014.24	4,371.28	37,226.16
Cash Balances at Beginning of Year	992,517.32	958,503.08	954,131.80	916,905.64
Cash Balances at End of Year	\$ 1,297,192.21	\$ 992,517.32	\$ 958,503.08	\$ 954,131.80

*Grant to the Alabama Dental Association for legislative assistance in the 2007-08 year.

Operating Receipts vs. Operating Disbursements (Chart)



Amounts collected and transferred to the Department of Public Health for the development, implementation, operation, and maintenance of the controlled substances prescription database pursuant to ***Code of Alabama 1975***, Section 20-2-217 are not included in the chart, because such amounts cannot be used by the board for its operations.

QUESTIONNAIRES

Board Members

Surveys were sent to all seven members of the Board of Dental Examiners of which six responded. The percentages shown are based on the number who responded to the question.

Question #1

What are the most significant issues currently facing Board of Dental Examiners and how is the board addressing these issues?

- Board Member #1.** Pending legislation concerning 501C3.
- Board Member #2.** Proliferation of non-dentist owned corporate dental clinics especially the ones with a non-profit 501-c-3 status. Current wording in the DPA 34-9-9 (a) (1), (2) & (3) would indicate that this is prohibited.
- Board Member #3.** CERTIFICATION OF 501-c3 AND ETHICS GUIDELINES FOR BOARD MEMBERS.
- Board Member #4.** Mobile dental treatment modalities; expanded function dental auxiliaries; corporate ownership of dental practices by non-dentists.
- Board Member #5.** Passage of legislation. Keeping up with the major changes in our profession some dictated by the US Government, insurance companies and dental technology.
- Board Member #6.** Need a full time executive director.

Question #2

What changes to the Dental Practice laws are needed?

- Board Member #1.** Working with the 501-C-3 groups to write acceptable legislation for both BDEA and the 501-c-3's
- Board Member #2.** We are currently seeking legislation to exempt 501-c-3 Medicaid clinics from the articles.
- Board Member #3.** OPEN DIALOGUE DURING BOARD MEETINGS AND TOWN HALL MEETINGS ACROSS THE STATE.
- Board Member #4.** Addressing/amending the dental practice act; surveying the dentist for input.
- Board Member #5.** I think the Board is addressing the issues very well. Plus maintaining and executing the Legislative Practice Act.
- Board Member #6.** Board has initiated a plan to fill this position.

Question #3

Is the Board of Dental Examiners adequately funded?

Yes	6	100.0%
No	0	0.0%

Board Member #5. [Yes] At the present time, this could change if our Board is forced to become more politically orientated. Being in the political arena could cause need for more funding.

Question #4

Is the Board of Dental Examiners adequately staffed?

Yes	4	66.67%
No	2	33.3%

Board Member #2. [No] We currently have an interim Executive Director who is at the Board office 2 days a week. We need to hire a full time ED.

Board Member #5. We have excellent employees.

Board Member #6. Previous comment.

Question #5

Does the board receive regular reports on the operations of the board from the chief administrative officer?

Yes	5	83.3%
No	1	16.7%

Board Member #2. [No] We don't have one.

Board Member #5. The Board receives updates on a monthly basis and the Executive Director keeps us informed by email weekly or daily.

Question #6

Has the board experienced any significant changes to its operations?

Yes	5	83.3%
No	1	16.7%

Board Member #1. [Yes] With the dismissal of [REDACTED] the lawyer and [REDACTED] the Executive Dir.

Board Member Questionnaire

Board Member #2. [Yes] We have restructured our staff and added an in house legal counsel.

Board Member #4. Communicating with dentist and asking for input.

Question #7

Does the Board of Dental Examiners plan any significant changes in its operations?

Yes	3	50.0%
No	2	33.3%
I don't know	1	16.7%

Board Member #1. We are looking into moving the office to Montgomery.

Board Member #2. Hiring of a full time Executive Director and possibly moving the Board operations to Montgomery.

Board Member #5. The Board is continually looking to satisfy needs that occur regularly therefore by keeping up I don't see any major crisis that would need to be acutely diagnosed and treated.

Board Member #6. Previous comment.

Licensees – Dentists

Surveys were sent to one hundred licensees of which nineteen responded. The percentages shown are based on the number who responded to the question.

Question #1

Do you think regulation of dentistry by the Board of Dental Examiners is necessary to protect public welfare?

Yes	19	100.0%
No	0	0.0%

Respondent #11. It needs to be regulated by those who know the profession, not someone who is a politician or an appointee.

Respondent #14. [Yes] This should include all entities that provide dental care according to the Dental Practice Act including whitening kiosks, spa whitening of teeth as well as 5013C entities that are presently existing under the nose of the BDE who claim that enforceability of the provisions of the Dental Practice Act to these entities is impossible.

Respondent #18. [Yes] Absolutely!

Question #2

Do you think any of the Board of Dental Examiners' laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	3	15.8%
No	13	68.4%
No Opinion	2	10.5%
Skipped question	1	5.3%

Respondent #11. It needs to be regulated by those who know the profession, not someone who is a politician or an appointee.

Respondent #12. [Yes] I would like to see expanded duties for the auxiliary staff and hygienist.

Respondent #14. [No] They need to enforce all provisions for all entities not just select ones.

Question #3

Do you think any of the Board's requirements are irrelevant to the competent practice of your profession?

Yes	3	15.8%
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No	14	73.7%
No Opinion	2	10.5%

Respondent #11. Since the Board is made up of practicing dentists, we stay in touch with what is going on in the practice of dentistry. It's like the guy that packs the parachutes has to jump the ones he's packed. He makes him do it right every time. We need to keep practicing dentists on the Board.

Respondent #19. [Yes] the board exam is good for general dentistry, but is invalid for the specialist.

Question #4

Are you adequately informed by the Board of changes to and interpretations of its positions on policies, rules and laws?

Yes	12	70.6%
No	4	23.5%
No Opinion	1	5.9%
Skipped question	2	

Respondent #4. NOT always—sometimes.

Respondent #11. I'm as informed as I want to be. The information is available for the asking. And it takes time to make it available. I appreciate the current and past members' diligence in making the information available.

Respondent #14. [No] The BDE seems to be silent as of the last couple of years.

Question #5

Has the Board of Dental Examiners performed your licensing and renewal in a timely manner?

Yes	17	89.5%
No	1	5.3%
No Opinion	1	5.3%

Respondent #14. [No Opinion] It takes about 8 weeks or more to receive renewals.

Question #6

Do you consider mandatory continuing education necessary for competent practice of your profession?

Yes	16	84.2%
No	3	15.8%

- Respondent #11.** And 20 hours a year is a minimum. Wouldn't hurt to do more.
Respondent #14. Absolutely!!
Respondent #18. More would be even better.

Question #7

Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

Yes	17	89.5%
No	1	5.3%
No Opinion	1	5.3%

- Respondent #13.** I receive more than 80 hours of CE per year....the majority if not all is received from somewhere else due to the variety and frequency of course.

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama? What is the Board doing to address the issue(s)?

- Respondent #1.** Personalities on the Board as a result of past problems. Hope more level headed people will run for the board.
- Respondent #2.** Probably the dental therapeutic idea. The board has hosted Town meetings to inform us of issues. It is tough because the statistics show things that are not a problem. For example, we checked for caries in Coosa County a couple of years since only one dentist there. Well most of those kids were better than the Alex City kids and we have over 6 dentists in town. Turns out the kids go to Dr. [REDACTED] in Sylacauga and he sees a ton of Medicaid kids. So yes, statistics say you need a dentist but folks in Coosa just drive over the line to Talladega and see a dentist along with buying groceries. I think Access to Dental Care has more to do with parents' initiative than a dozen dentists in their backyard.
- Respondent #3.** Licensing of dental labs.
- Respondent #4.** 3rd party reimbursement- not doing enough assistant/hygiene changes in duties- having meetings.
- Respondent #5.** Interference from non-dentists on the practice of dentistry.
- Respondent #6.** #1 - Illegal restraint of trade by the insurance industry: Specifically, the insurance industry is allowed the freedom to consult with each other regarding fees, but dentists are not. Also, they are allowed to "coordinate benefits" among providers for the same patient, thereby resulting in less benefit coverage for the second and third insurance carriers, even though the patient/insurance client is paying the same monthly fee that would be paid if the policy was a 'stand-alone' policy. Bottom line, since benefits paid by secondary and tertiary policies are 'coordinated', the patients/employers are receiving less benefits than they would if all policies paid as if they were the primary

policy. Since monthly premiums for the secondary and tertiary policies are not reduced due to payments by other carriers, the benefits should not be reduced either. The secondary and tertiary insurance carriers should pay the patient benefits as if their policies were stand-alone policies. The current situation amounts to no less than fraud, theft and usury. Surely the insurance commissioner can right this wrong without the complications of legislative action. I have been told by the Board's attorney that it would be improper to place verbiage to correct this problem in the current bill to amend the Alabama Dental Practice Act now in Legislative Committees. Request you seek independent counsel from the AG's office to determine the best solution to this problem.

#2 - The Ownership of Dental Clinics/Practices by 501(c)3 entities that are not dentists: Legislation allowing this situation slipped through the legislature last year due to neglect of due diligence by the former Director of the Alabama Dental Association. As such, we are told that because it is a 'done deal' it cannot be undone. If this law is allowed to remain intact and non-dental professionals are allowed to own and operate 501(c)3 dental clinics/practices, dentistry will be relegated to a commercial business and will lose its proprietary role of dental health care for the Citizens of Alabama due to the financial pressure of competition for the almighty dollar. Without professional ownership of the 501's, it is inevitable that dental care will be degraded and standards will fall due to the pressure for production and bonuses for corporate officers. I am unaware of any substantive action that can be taken by the Board other than action to support repeal the section of the Dental Practice Act that allowed this to happen last year. It is my understanding that such action would be undertaken if it were not for the threat of legal action by existing large 501(c)3's against the Board and the Alabama Dental Association.

Respondent #7. Whether mid-level providers are needed. The board is reviewing this issue in order to make a decision that is best for the patients in Alabama.

Respondent #8. Need to prevent expanded duties for hygienists and assistants. They are not dentists and they never will be dentists. The board needs to stop this.

Respondent #9. No Response.

Respondent #10. The monopoly that Blue Cross Blue Shield has on the dental insurance industry in Alabama puts undue pressure on dentists to be preferred providers and thus limit our ability to follow free trade in business.

Respondent #11. Use of materials is one. Our Board follows the research in the many facilities aligned with the ADA and the other specialties. We don't go overboard, we stick to what research shows. Our Board is practical. The licensing is an issue. We have changed the licensing agency in the last 5 years, maybe for the better, maybe not. Our Board is aware of the problems, and is working it.

Respondent #12. Expanded duties for staff

Respondent #13. I believe the board is very strict in terms of change for the better. I believe Alabama is behind other states as it pertains to dentistry for exam, the hand held x-ray machine currently can't be used in the state. It should be!

Respondent #14. 501 3C entities operating without regards to the Dental Practice Act Not sure what BDE is doing other than introducing bills to the AL Legislature Not sure if

the rules for one group will be enforced and applied to all. Sends the message to practicing dentists that loopholes exist and the BDE is willing to look the other way.

Respondent #15. The increasing constriction exerted by insurance companies upon dentists in the state of Alabama to attempt to control treatment decisions that can be made for patients.

Respondent #16. Expanding duties for hygienists. They are promoting it.

Respondent #17. No opinion.

Respondent #18. Intrusion of 3rd parties (insurance co.) in to our profession. Their decisions are based on \$ not health for the patient.

Respondent #19. Non-supervised midlevel providers doing dental procedures, non-dentists attempting to do procedures that are specific to the dental practice act. I think the Board is doing all it can to address this issue.

Question #9

Do you think the Board and its staff are satisfactorily performing their duties?

Yes	15	78.9%
No	2	10.5%
No Opinion	2	10.5%

Respondent #14. [No] Need more vocalization from the board on the issues of the 501 3C entities that are circumventing the law and requirements.

Question #10

Has any member of the Board or its' staff asked for money (other than normal fees) or any other thing of value in return for performing a board service for you?

Yes	1	5.3%
No	18	94.7%

Respondent #11. I think the professionals that are VOTED in have the highest morals. There are members that are appointed, per se. I don't like not having a vote to put these people in. I think it is wrong, and shouldn't be done.

Licensees – Dental Hygienists

Surveys were sent to one hundred licensed dental hygienists of which eleven responded. The percentages shown are based on the number who responded to the question.

Question #1

Do you think regulation of your profession by the Board of Dental Examiners is necessary to protect public welfare?

Yes	10	100.0%
Skipped question	1	

Question #2

Do you think any of the Board of Dental Examiners' laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	3	27.3%
No	6	54.5%
No Opinion	2	18.2%

Respondent #8. [Yes] with regards to supervision.

Question #3

Do you think any of the Board's requirements are irrelevant to the competent practice of your profession?

Yes	2	18.2%
No	7	63.6%
No Opinion	2	18.2%

Respondent #7. [Yes] Strongly disagree with the policy that allowing dental assistants deliver patient care with neither professional education nor license and after completing proceptorship program becoming licensed dental hygienists. It contradicts Nationwide requirements for delivering quality patients dental care. In my opinion, AI Dental Practice Act should require registration of every dental assistant with the board and CDA certification.

Question #4

Are you adequately informed by the Board of changes to and interpretations of its positions on policies, rules and laws?

Yes	7	63.6%
No	3	27.3%

Licensee Questionnaire – Dental Hygienists

No Opinion	1	9.1%
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Respondent #3. [No] I do not feel like I know enough of what the board's duties are and we are not informed of changes sometimes until they are already passed into law.

Respondent #5. To my knowledge there has not been that many changes since I became a Hygienist and I feel when there were changes I was informed.

Question #5

Has the Board of Dental Examiners performed your licensing and renewal in a timely manner?

Yes	11	100.0%
No	0	0.0%

Respondent #3. But, it would be more convenient if they were to offer renewals online. Our dues continue to increase but we do not see any differences in representation.

Question #6

Do you consider mandatory continuing education necessary for competent practice of your profession?

Yes	10	90.9%
No	1	9.1%

Respondent #7. [Yes] It is absolutely necessary for dental care professionals, especially those with no formal education like dental assistants and dental hygienists. It would be beneficiary to the public welfare that those dental assistants in AI who do not possess CDA certificates and those licensed AI dental hygienists who are not National Hygiene Board certified be required more hours of CE. That will create little more work for the Board but public will definitely benefit from it.

Question #7

Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

Yes	10	90.9%
No	1	9.1%

Respondent #5. Yes, but the Alumni Meeting in Bham has sure gone up in cost.

Respondent #11. [No] If we were able to have a couple of hours a year for CE for fun would be nice.

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama? What is the Board doing to address the issue(s)?

Comments:

Respondent #1. Pay, Degree RDH vs. Preceptor.

Respondent #2. Allowing hygienist to do injections for root planning and curettage. The board is asking for opinions and votes.

Respondent #3. The advent of more expanded duties for hygienists and assistants. I feel like they may be implementing that simply in order to allow the dentists to increase production without taking quality or the safety of the patient into consideration.

Respondent #4. Rising cost

Respondent #5. Having dentists in the rural areas so that those of us who live and work there can have a dentist to work for. I think the Board needs to do more to educate those currently in dental school of the need and hopefully supply some type of incentives for locating in rural areas.

Respondent #6. Salary. We are the lowest paid in the country, most dentist say it's due to the ADHP, but we are doing the same job as someone in another state but being grossly underpaid, according to our title.

Respondent #7. Existence of proceptorship program and no regulations for dental assistants' training/registration in the state. Feels like the Board is working hard to protect hygienist proceptorship program.

Respondent #8. I think that more education and preparation of dental hygiene candidates is needed before entering private practice. I do not know what the Board is doing to address the issue.

Respondent #9. Skipped question.

Respondent #10. Skipped question.

Respondent #11. Skipped question.

Question #9

Do you think the Board and its staff are satisfactorily performing their duties?

Yes	5	45.5%
No	1	9.1%
No Opinion	5	45.5%

Respondent #5. [Yes] There has been a lot of controversy in the past but I think the present board is communicating with the dentists more, my dentist communicates with our staff. I'm not sure if other dentists do. I think it would be better if the Board communicated directly with the hygienists in addition to the dentist.

Respondent #11. [No] I feel when the Board was in Huntsville I had better relationship with the staff.

Question #10

Has any member of the Board or its' staff asked for money (other than normal fees) or any other thing of value in return for performing a board service for you?

Yes	0	0.0%
No	11	100.0%

Respondent #3. [No] However, I do feel like they need stronger laws concerning ethical practices for the board members. During the last election there was a hygienist running for the position of RDH who worked for a board member. She did not get elected but I feel that if she had been successful it would have been a tremendous conflict of interest. Also there is an issue of board members accepting campaign contributions without full disclosure.

Complainants

Surveys were sent to one hundred complainants of which 39 responded. The percentages shown are based on the number who responded to the question.

Question #1

Was your complaint filed with the Board of Dental Examiners by:

Mail	31	83.8%
Phone	8	21.1%
Fax	1	2.6%
Other	3	7.9%
Skipped question	1	

Respondent #5. This survey seems to not be working. Well, not very well at least to begin with. Perhaps it would be useful to explain to users to double-click on the choices. It is not intuitive since all other check boxes and radio buttons usually only require one click.

Respondent #9. I don't remember filing a complaint.

Respondent #10. Left at office in Hoover.

Respondent #13. Went in the office to deliver. Tried to talk with someone but they are too busy.

Respondent #17. And by lawyer it took OVER A YEAR FOR THEM TO REPLY TO MY COMPLAINT.

Respondent #19. I filed three complaints by certified mail. Two complaints were acknowledged. One complaint was not acknowledged.

Respondent #25. The complaint was sent via certified mail. I know it was received however the board never contacted me. When I heard nothing I called them.

Respondent #31. I delivered in person.

Question #2

Was receipt of your complaint promptly acknowledged?

Yes	21	53.8%
No	14	35.9%
I don't remember.	4	10.3%

Question #3

Approximately how long after you filed your complaint were you contacted by the Board of Dental Examiners?

Within 10 days	8	20.5%
Within 20 days	3	7.7%
Within 30 days	5	12.8%
More than 30 days	11	28.2%
I was not contacted.	6	15.4%
I do not remember	6	15.4%

Question #4

Was the employee who responded to your complaint knowledgeable and courteous?

Knowledgeable	3	9.1%
Courteous	7	21.2%
Knowledgeable and Courteous	6	18.2%
Neither Knowledgeable nor Courteous	11	34.3%
I don't know	8	24.2%

Respondent #4. Never try to understand my sufferings. Dr. [REDACTED] unauthorizedly pulled my tooth; one of my partial is anchored to that tooth. Since then I cannot eat properly. My partial is loose and it comes off when I try to chew. Purpose of my visit was to clean the teeth. He told me to pull another four teeth. Total cost would be more than six thousands dollar. He never talked about cleaning the teeth.

Respondent #5. I contacted the board after not hearing anything for a great while and was told that they were working on my complaint and would contact me when it was resolved. I was never contacted. As far as I know, they never did anything about my complaint.

Respondent #6. No one actually discussed my complaint with me. I was just told that the board meets every 30 days. I received a letter stating that my case was closed months later without stating what actually happened concerning my complaint. I feel it's the board's responsibility to let me know the details of their findings.

Respondent #10. It has been a very long time since I filed my complaint so it's difficult to remember time frame.

Respondent #13. Seemed too busy to talk.

Respondent #14. The employee's title was investigations secretary. It was an acknowledgement of receipt for the complaint and that a notification of a decision would be as soon as possible.

Respondent #17. Didn't treat me well at all every time I asked a question they just said they didn't know and all I received was a letter that also took over a YEAR TO ANSWER MY CASE.

Respondent #19. [REDACTED] [REDACTED] refused to provide complete copies of medical records and medical correspondences. Mr. [REDACTED] [REDACTED] stated I was sent everything required by Code of Alabama (1975) 34-12-2; 36-12-40 & 41-13-1 and 5U.S.C.A.522. None of these codes have anything to do with my request for medical records and medical correspondences from [REDACTED] [REDACTED]. When I asked for clarification, Mr. [REDACTED] [REDACTED] stated that there will be no further explanation, to seek advice from private counsel and the matter was considered closed. I filed a complaint about Dr. [REDACTED] [REDACTED] placing a large filling instead of a crown I had requested. The large filling caused additional cracking, pain and infection to the tooth. Dr. [REDACTED] refused to remove the filling and replace with a crown, sent me to another doctor for a root canal and told me there was no need to return to his office. I had to have another dentist replace the filling with a crown which took care of the problem without having a root canal. I filed a complaint about the problems I had getting Dr. [REDACTED] [REDACTED] to wear gloves when working in my mouth and being unable or unwilling to place a metal wire correctly without getting gobs of cement on my gums and gum line. [REDACTED] [REDACTED] stated that there was no violations by Dr. [REDACTED] and Dr. [REDACTED] and considered the matter closed.

Respondent #21. [REDACTED] [REDACTED] was the employee; I've known him for years. This took two years; I was lead to believe something was going to be done about it. About two years from the first time I spoke to him I received a letter telling me nothing was going to be done about it. I feel as if he was bought off. I had to call him during all of this and he never knew anything. I feel as if I got screwed over, first by Dr. [REDACTED] [REDACTED] and then by the Board of Dental Examiners. \$10,000.00 is a lot of money to waste on the incompetency of a Dentist.

Respondent #22. But nothing was ever done about it and I felt it was not taken care of correctly.

Respondent #25. The person handling my complaint did not contact me. I called the board to ensure my complaint had been received.

Respondent #26. I was not contacted by phone only by letter and it was only to tell what they felt were their findings.

Respondent #29. Just said they would look into it. I contacted the American Dental Association and the Alabama Dental Association. If I remember correctly it was the State that responded by mail.

Respondent #35. Received mail acknowledging our complaint.

Respondent #36. The woman who told me she would send me information and paperwork was nice.

Respondent #39. Thank you for your help!

Question #5

Did the Board of Dental Examiners communicate the result of investigating your complaint to you?

Yes	28	71.8%
No	9	23.1%
I don't remember.	2	5.1%

- Respondent #1.** [Yes] but not in any sort of detail.
- Respondent #4.** Board sided to Dr. [REDACTED] which is totally wrong.
- Respondent #5.** To my knowledge there was no investigation or results.
- Respondent #6.** I just received a letter that my case was closed. I didn't receive any details of the results of my complaint.
- Respondent #7.** I provided many details and e-mails about the incompetent, thieving dentist and I got a form letter from the board saying that he did nothing wrong. Everybody else said what he did to me was very wrong and should be "black listed" so that others would know and not go through what I did. I'm pretty sure that that wasn't the first time he did something like that.
- Respondent #10.** I'm not positive but I think I had to call to get results.
- Respondent #11.** I cannot remember much on this as it has been a while. I do know there has not been a repeat of the violation (which is good). The "complaint" was something whose result would not be evident for about a year. (general dentist marketing to the public as a specialist).
- Respondent #15.** There was no communication regarding the complaint
- Respondent #17.** All I got was a short letter saying that there was no action required. If a dentist is able to do that to people there is something wrong with the dental board. If you want to review ask them for my case files and review, and check pictures I sent them.
- Respondent #21.** Like I said most of the time I had to call [REDACTED] and even though he agreed with me and knew Dr. [REDACTED], said the board had a lot of complaints about her from different people; he would never give me a straight answer to any of my questions. Never call me back. I am very dissatisfied with the Board. I had to [go to] UAB Dental School and pay all over again to get my teeth fixed.
- Respondent #22.** Dental board as i recall said i had sent to the wrong people. This was long after complaint was filed. I called the board to check on status of claim.
- Respondent #25.** I was never contacted by anyone from the board regarding my complaint. After several months I received a one line letter stating that the board was closing the investigation and in no way was the dentist in question being reprimanded. I called the board several times in an attempt to clarify this situation and was unable to reach the person handling the case. My calls were never returned.
- Respondent #26.** I was never talked to.

Respondent #27. I waited several months and did not hear anything from the board. I had to contact them to request the status of my complaint.

Respondent #29. It was quite some time before they responded. I eventually received a letter saying they had looked into it and found nothing wrong!

Respondent #31. There should have been a meeting, this was a serious violation of ethics by Dr. Scott. He did work on me (an extra cap) that was not requested, planned and scheduled. After he did the work he said I got a freebie. Later when I received my BCBS breakdown he filed the third cap with them. Totally dishonest and unethical.

Respondent #35. Received letter saying that the dentist did nothing wrong, case closed.....

Respondent #37. I was very disappointed to not hear back from them after complaint was discussed.

Question #6

Do you think the Board of Dental Examiners did everything it could to resolve your complaint?

Yes	7	17.9%
No	26	66.7%
I don't know	6	15.4%

Respondent #3. The dentist I was complaining about was on the board.

Respondent #4. Board should force Dr. [REDACTED] to put the tooth back or compensate or replacement for the tooth.

Respondent #5. I believe that the BDE did nothing to address or resolve my complaint.

Respondent #10. All my documentation had accurate details of the situation. The dental office, in my opinion did not handle my pricing issue properly & that is why I filed the complaint.

Respondent #11. I cannot remember much on this as it has been a while. I do know there has not been a repeat of the violation (which is good). The "complaint" was something whose result would not be evident for about a year (general dentist marketing to the public as a specialist).

Respondent #13. It appeared they did not have time for me to counter anything the Dental School convinced them off but that may be the way it operates. I presented my complaint & the School answered but I had no idea what was presented by the Dental School. I know that the dental student did a poor job & the School of course does not want to admit to it.

Respondent #15. I did not receive a response.

Respondent #17. If they would have looked into my complaint there would have been some action taken; I never heard of a dentist that could perform a sinus surgery

Respondent #19. I do not believe the Board of Dental Examiners did everything to resolve my complaints and are completely ineffective. It appears the State of Alabama does not follow HIPAA. It was necessary for me to file a HIPAA complaint with the Office for Civil Rights in order to get the requested copies of my medical records from [REDACTED] and I don't believe I have everything. I also have filed complaints with the Board of Chiropractic Examiners and Board of Medical Examiners about problems getting access and copies of medical records. Both Boards were completely ineffective. I had to subsequently file HIPAA complaints and still had problems. While the Legislature is considering Health Care Reforms and Reforms in State Government, perhaps my experiences can be considered. It is critical to have access to and copies of medical records in order to combat medical identity theft, fraud and incorrect billings and services.

Respondent #21. I have lost confidence in the Board of Dental Examiners to do what is right for the people, when it comes to doing anything about my complaint.

Respondent #22. I did not file a law suit for this issue thought the dental board would investigate. No one ever ask me anything concerning this problem. I was encouraged to file claim with you.

Respondent #25. I do not believe the Board addressed my complaint in any way. I was never contacted by the board after I sent in my complaint.

Respondent #26. They never contacted me to get my side of the story and never did the dentist in question contact me to resolve my issues.

Respondent #27. The dentist I made a complaint on stated my 5 year son had 4 cavities and scheduled him for fillings. I got two second opinions from other dentists; both stated he did not have a single cavity. The "Board of Dental Examiners" stated they could not do anything about it. They are totally worthless.

Respondent #29. The dentist was not qualified to do the type work that was needed. Also he let his associates (who are dental hygienists) do most of the work.

Respondent #35. No again...no follow-up, just a letter ending it from them?

Respondent #36. [REDACTED] ([REDACTED]) is a crook. Having dentists oversee dentists is like giving a bank robber a job as a teller. Their response was, "Your complaint is not under our jurisdiction".

Respondent #37. The Dentist is still practicing and from what I gather still doing mean things to the children and the Parents.

Question #7

Were you satisfied with your dealings with the Board of Dental Examiners?

Yes	6	15.8%
No	32	84.2%
Skipped question	1	

- Respondent #1.** Absolutely not! One reason I filed the complaint is because the dentist refused to discuss the matter with me. He did not cooperate with American express or Blue Cross/Blue Shield when they contacted him. Even his assistant who handled payments, who I first spoke with, stated that I had been overcharged and was due a refund. Yet, the dental board could not find anything that the dentist had done wrong and ruled in his favor.
- Respondent #4.** Their investigation is wrong and saved the dentist. They should review the matter again.
- Respondent #5.** Absolutely not. Perhaps we could do away with this group and save Alabama some money since they appear to be totally dysfunctional anyway.
- Respondent #6.** I feel that they closed my case without any real concern of my situation. I have an unfinished tooth and a dentist that was fully paid for her services. This dentist did not finish her work and fulfill her agreement. I'm very dissatisfied.
- Respondent #7.** I provided substantial documentation and even had another dentist verify that the corner (cusp) of the crown had broken off within 3 days of having it put on. I now have a chipped place that catches food and chewing gum. He refused to fix it and make it right.
- Respondent #9.** I don't remember filing a complaint,
- Respondent #10.** Both Dr. [REDACTED] & her office manager were out of line in not honoring the proper fee charges they had agreed to by the plan I was on - again detailed in my documentation. Apparently the BofDE is only interested in services performed, but in my opinion my issue deserved to be heard & addressed. They've lost my business and I know of two definite losses of potential new patients was discouraged. I will continue to cite my issue to anyone that might consider this practice. I live very near & any new neighbor I encounter will be steered away too.
- Respondent #13.** I find this hard to answer as the people I dealt with at the front desk were pleasant and courteous but it was just to accept my papers & "be on your way attitude." This process seemed like the "insurance company attitude" That is, "you deny any wrongdoing automatically with 1st few attempts." There did not seems any rebuttal for me at this level. This is why I had to go to another process with the Alabama Board of Adjustment. I had uneasy feelings about Dr. [REDACTED] [REDACTED] faculty advisor in the Clinic (Dr. [REDACTED]) (not enough supervision or oversight).
- Respondent #14.** I was told that the board of examiners did not have anything to do with price. Each Dentist set their own prices, which I am not comfortable, which was totally outrageous ([REDACTED] [REDACTED] in McCalla AL.) the last procedure was \$50.00 for a plastic clip, within a year it went to \$200.00
- Respondent #15.** The Board of Dental Examiners gave no explanation as to why dentists are not required to file a report when a patient is inflicted with Bell's Palsy as a result of dental treatment.
- Respondent #17.** It took entirely to long for them to get back to me and every time i called they said they didn't get to it yet and they would say they didn't know why it took

too long I AM NOT HAPPY WITH THEM AT ALL IF YOU WANT TO CONTACT ME OR LOOK AT MY FILE IT WOULD BE OK WITH ME.

Respondent #18. I think there should be some way of dealing with a dentist knowing that he has no intention of paying a lab for its services. I was not the only dental lab Dr. [REDACTED] bilked out of payment.

Respondent #19. I am extremely dissatisfied with the Board of Dental Examiners. As supposedly professionals, I expect answers that make sense and that are responsive. I should not have to research the Code of Alabama or seek advice from private counsel. There should be personnel at the Board of Dental Examiners who are knowledgeable about access to medical records and medical correspondences in the possession of dental offices.

Respondent #20. I do think that the dentist could have done something to fix the problem or at least offered some of my money back that I spent with another dentist getting the problem somewhat fixed. Neither one was done and I have no reason to go back that Dentist nor would I tell anyone else about the dentist.

Respondent #21. Like I said I feel as if Dr. [REDACTED] [REDACTED] of Warrior paid her way out of this one yet again.

Respondent #22. I spent a lot of money on a tooth and 3 months later it was broken and felt that the dentist should of been made to at least make it right. It was over a thousand dollars and money for me is hard to come by for a tooth. Actually I feel that the cost is WAY TOO HIGH for people to come up with. Dentists rob you: (People with no insurance don't have a chance.....

Respondent #23. There were no dealings; I was not asked about this by any board member. I will refer you to written detail of this event please re-read. If you did not receive this document i will be most happy to send it again

Respondent #25. I do not believe that this organization is capable of policing themselves. I do not believe any action was taken on my complaint. As a result I ended up paying \$1600 for services I never received. My money was never refunded by the dentist.

Respondent #26. After thousands of dollars and many dentists I was not given satisfaction by the board or by this particular dentist. I have finally gotten a dentist that knew how to resolve my problems and to give me relief.

Respondent #27. They are useless.

Respondent #29. This dentist is trying to see too many patients (he is elderly). He talks on a headset while he is trying to work on you. I explained to the board that I was forced to seek another Dentist who is a cosmetic dentist and it ended up costing me thousands of dollars to correct what the former dentist did. They basically said they could not help me. [REDACTED] [REDACTED] was my insurance and I can understand why they would not cover the cost to correct the horrendous job that was done on me. The second dentist found cavities under the work he had done on me, teeth not aligned properly etc. You would have to contact her to get a full explanation. Please feel free to contact me for further information you

Complainant Questionnaire

might need. It is good to have someone going back and checking my request to help.
Thank You, [REDACTED] [REDACTED]

Respondent #31. I felt this should have been truly investigated and it wasn't.

Respondent #33. I have no confidence in the Board.

Respondent #34. My complaint was handled very much to my satisfaction.

Respondent #35. Is the Board run by dentists, like Tennessee's Board? Circle their wagons and brushed malpractice under the carpet to protect their own club.

Respondent #36. I asked [REDACTED]'s staff if all they were doing was covered by my insurance and they said, "Yes, we checked". I was concerned because they did a panoramic X-ray and I had never had one done. My daughter did when she had her wisdom teeth out, and I knew they were expensive. Not once did they ever tell me that they were NOT IN network with my insurance company. They said the panoramic gives a better picture. It is funny that I had two cracked teeth that my original dentist, [REDACTED] in Gardendale saw, and noted, but yet the 30 seconds [REDACTED] spent with me, he did not. I sent a letter telling them what I was going to do and that they are crooks (they charged me \$222 over what my insurance paid for cleaning and X-rays for my daughter and I. Had they asked for payment from ME, my daughter would not have gone). They taped it up, put a typed sticker on the return (I did not put a return address on the envelope) with my address and wrote 'Return to Sender'. Isn't that fraud? I have plastered the internet and Angie's List and put up signs. I had an attorney but he told me to tell them to come and get their money. In the meantime, they reported me to the Credit Bureau. It should be against the law to do to a consumer what they did. No, I am not satisfied.

Respondent #38. I was not satisfied with their judgment at all.

APPENDICES

Applicable Statutes

TITLE 34

CHAPTER 9. DENTISTS AND DENTAL HYGIENISTS

ARTICLE 1. GENERAL PROVISIONS.

§ 34-9-1. Definitions. *Current through the end of the 2010 Regular Session.*

For the purposes of this chapter, the following terms shall have the respective meanings ascribed by this section:

- (1) Annual registration. The documentary evidence that the board has renewed the authority of the licensee to practice dentistry or dental hygiene in this state.
- (2) Board. The Board of Dental Examiners of Alabama.
- (3) Commercial dental laboratory. A technician or group of technicians available to any or all licensed dentists for construction or repair of dental appliances.
- (4) General anesthesia. A controlled state of unconsciousness, accompanied by a partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic method.
- (5) License. The grant of authority by the board to a person to engage in the practice of dentistry or dental hygiene.
- (6) License certificate. The documentary evidence under seal of the board that said board has granted authority to the licensee to practice dentistry or dental hygiene in this state.
- (7) Licensed dentist. A dentist who holds a current license certificate from the board.
- (8) Licensed hygienist. A hygienist who holds a current license certificate from the board.
- (9) Local anesthesia. The elimination of sensations, especially pain in one part of the body by topical application or regional injection of a drug.
- (10) Practice of dentistry across state lines.
 - a. The practice of dentistry as defined in Section 34-9-6 as it applies to the following:
 1. The rendering of a written or otherwise documented professional opinion concerning the diagnosis or treatment of a patient located within this state by a dentist located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to the dentist or his or her agent.
 2. The rendering of treatment to a patient located within this state by a dentist located outside this state as a result of transmission of individual patient data by electronic or other means from this state to the dentist or his or her agent.
 3. The holding of himself or herself out as qualified to practice dentistry, or use any title, word, or abbreviation to indicate or induce others to believe that he or she is licensed to practice dentistry across state lines.
 - b. This definition is not intended to include an informal consultation between a licensed dentist located in this state and a dentist located outside this state provided that

the consultation is conducted without compensation or the expectation of compensation to either dentist, and does not result in the formal rendering of a written or otherwise documented professional opinion concerning the diagnosis or treatment of a patient by the dentist located outside the state.

(11) Private technicians. A technician employed by a dentist or group of dentists for a specified salary.

(12) Sedation. A depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command, produced by a pharmacologic method.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 34; Acts 1985, No. 85-697, § 1; Act 99-402, p. 669, § 1; Act 2009-18, p. 43, § 3.)

§ 34-9-2. Legislative findings. *Current through the end of the 2010 Regular Session.*

(a) The Legislature hereby declares that the practice of dentistry affects the public health, safety, and welfare and should be subject to regulation. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry in the State of Alabama. All provisions of this chapter relating to the practice of dentistry and dental hygiene shall be liberally construed to carry out these objects and purposes.

(b) The Legislature also finds and declares that, because of technological advances and changing practice patterns, the practice of dentistry is occurring with increasing frequency across state lines and that the technological advances in the practice of dentistry are in the public interest.

(c) The Legislature further finds and declares that the practice of dentistry is a privilege. The licensure by this state of nonresident dentists who engage in dental practice within this state is within the public interest. The ability to discipline the nonresident dentists who engage in dental practice in this state is necessary for the protection of the citizens of this state and for the public interest, health, welfare, and safety.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 1; Act 99-402, p. 669, § 1.)

§ 34-9-3. License required to practice dentistry. *Current through the end of the 2010 Regular Session.*

It shall be unlawful for any person to practice dentistry in the State of Alabama except the following:

(1) Those who are now duly licensed dentists, pursuant to law.

(2) Those who may be hereafter duly licensed and who are currently registered as dentists, pursuant to this chapter.

(3) Those nonresident dentists who have been issued a special purpose license to practice dentistry across state lines in accordance with Section 34-9-10. This subdivision shall not apply to those dentists who hold a full, unrestricted, and current license issued pursuant to Section 34-9-10.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 7; Act 99-402, p. 669, § 1.)

§ 34-9-4. License required to practice dental hygiene. *Current through the end of the 2010*

Regular Session.

It shall be unlawful for any person to practice dental hygiene in the State of Alabama, except:

(1) Those who are now licensed dental hygienists, pursuant to law; and

(2) Those who may hereafter be duly licensed and who are currently registered as dental hygienists pursuant to the provisions of this chapter.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 8.)

§ 34-9-5. Penalties. *Current through the end of the 2010 Regular Session.*

Any person who shall practice dentistry, engage in the practice of dentistry across state lines, or practice dental hygiene in this state within the meaning of this chapter without having first obtained from the board a license and an annual registration certificate, when the certificate is required by this chapter, or who violates this chapter, or who willfully violates any published rule or regulation of the board, or who does any act described in this chapter as unlawful, the penalty for which is not herein specifically provided, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) for each offense, to be fixed by the court trying the case, and in addition thereto may be, in the discretion of the court, sentenced to hard labor for the county for a period not to exceed 12 months.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 9; Act 99-402, p. 669, § 1.)

§ 34-9-6. What constitutes practice of dentistry. *Current through the end of the 2010 Regular Session.*

Any person shall be deemed to be practicing dentistry who performs, or attempts or professes to perform, any dental operation or dental service of any kind, gratuitously or for a salary, fee, money or other remuneration paid, or to be paid, directly or indirectly, to himself or herself, or to any person in his or her behalf, or to any agency which is a proprietor of a place where dental operations or dental services are performed; or

(1) Who directly or indirectly, by any means or method, makes impression of the human tooth, teeth, jaws or adjacent tissue, or performs any phase of any operation incident to the replacement of a tooth or any part thereof; or

(2) Supplies artificial substitutes for the natural teeth, and who furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or any other structure to be worn in the human mouth; or

(3) Who places such appliance or structure in the human mouth, or adjusts or attempts or professes to adjust the same, or delivers the same to any person other than the dentist upon whose prescription the work was performed; or

(4) Who professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth, or who diagnoses, or professes to diagnose, prescribe for, professes to prescribe for, treats or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure, or who extracts or attempts to extract human teeth, or remove tumors, abnormal growths, or other lesions from the human gums, jaws, and adjacent structures, or who operates for harelip or cleft palate; or who treats surgically or mechanically fractures of the human jaw; or who administers local or general anesthetics in the treatment of any dental lesion; or

(5) Who repairs or fills cavities in the human teeth; or

(6) Who uses a roentgen or X-ray machine for the purpose of taking dental X-rays or roentgenograms, or who gives, or professes to give, interpretations or readings of dental X-rays or roentgenograms, or X-ray or roentgen therapy; or

(7) Who administers an anesthetic of any nature in connection with a dental operation; or

(8) Who uses the words "dentist," "dental surgeon," "oral surgeon," or the letters "D.D.S.," "D.M.D." or any other words, letters, title, or descriptive matter which in any way represents him or her as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the teeth or jaws, or adjacent structures; or

(9) Who states, or professes, or permits to be stated or professed by any means or method whatsoever that he or she can perform or will attempt to perform dental operations, or render a diagnosis connected therewith; or

(10) Who performs any clinical operation included in the curricula of recognized dental colleges; provided, that members of the faculty, teachers, instructors, fellows, interns, residents, dental students, and student dental hygienists who are employed by or who are taking courses or instructions at the University of Alabama School of Dentistry or such other dental colleges, hospitals or institutions in Alabama, as may be approved by the board; and provided, that the work of fellows, interns, residents, dental students, and student dental hygienists is performed within the facilities of such dental colleges, hospitals, and institutions under the supervision of an instructor and as an adjunct to his or her course of study or training, shall not be required to take examination or obtain a license certificate and renewal license certificate when all of such work, dental operations, and activities are confined to his work in the college, hospital, or other institution and the work is done without remuneration other than the regular salary or compensation paid by such colleges, hospitals, or other institutions.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 10.)

§ 34-9-6.1. Mobile dental facilities or portable dental operations. *Current through the end of the 2010 Regular Session.*

(a) For purposes of this section, the following words have the following meanings:

(1) Dental home. The dental home is the ongoing relationship between the dentist and the patient, inclusive of all aspects of oral health care, delivered in a comprehensive, continuously accessible, coordinated, and family-centered way.

(2) Mobile dental facility or portable dental operation. Any self-contained facility in which dentistry or dental hygiene is practiced which may be moved, towed, or transported from one location to another.

(3) Operator. A person licensed to practice dentistry in this state or an entity which is approved as tax exempt under Section 501(c)(3) of the Internal Revenue Code which employs dentists licensed in the state to operate a mobile dental facility or portable dental operation.

(b) In order to operate a mobile dental facility or portable dental operation, an operator shall first obtain a certificate of registration issued by the Board of Dental Examiners. The operator shall complete an application in the form and manner required by the board and shall meet all qualifications established by rules of the board.

(c) A mobile dental facility or portable dental operation shall comply with all of the following requirements:

(1) The operator shall maintain an official business address which shall not be a post office box and which shall be within this state and be associated with an established dental facility which shall have an official business address on record with the Board of Dental Examiners. The address shall be filed with the board as part of the application for a certificate of registration.

(2) The operator shall maintain an official telephone number of record which shall be accessible 24 hours a day and which shall be filed with the board as part of the application for a certificate of registration. The telephone number shall have 911 capability.

(3) The board shall be notified within 30 days of any change in address, location, or telephone number of record. The notification shall also include the method by which patients are notified of the change of address, location, or telephone number of record. For purposes of this subdivision, patient shall mean any individual who has received treatment or consultation of any kind within two years of the date of the proposed change of address, location, or telephone number of record.

(4) All written or printed documents available from or issued by the mobile dental facility or portable dental operation shall contain the official business address and telephone number of record for the mobile dental facility or portable dental operation.

(5) When not in transit, all dental and official records shall be maintained at the official business address.

(6) The operator shall maintain a written procedure for emergency follow-up care for patients treated in a mobile dental facility or a portable dental operation, which includes arrangements for treatment in a dental facility that is permanently established in the area within a 50-mile radius where services are provided subject to a qualified dentist being located in the area and subject to the dentist agreeing to provide follow-up care. An operator who either is unable to identify a qualified dentist in the area or is unable to arrange for emergency follow-up care for patients otherwise shall be obligated to provide the necessary follow up via the mobile dental facility or portable dental operation or the operator may choose to provide the follow-up care at his or her established dental practice location in the state or at any other established dental practice in the state which agrees to accept the patient. An operator who fails to arrange or provide follow-up care as required herein shall be considered to have abandoned the patient, and will subject the operator and any dentist or dental hygienist, or both, who fail to provide the referenced follow-up treatment to disciplinary action by the board.

(7) The mobile dental facility or a portable dental operation shall have communication facilities that will enable the operator to contact necessary parties in the event of a medical or dental emergency. The communication facilities shall enable the patient or the parent or guardian of the patient treated to contact the operator for emergency care, follow-up care, or information about treatment received. The provider who renders follow-up care must also be able to contact the operator and receive treatment information, including radiographs.

(8) The mobile dental facility or a portable dental operation and the dental procedures performed therein shall comply with all applicable federal and state laws and all applicable rules of the board promulgated pursuant to Section 34-9-43.

(9) Any driver of a mobile dental facility or a portable dental operation shall possess a valid Alabama driver's license appropriate for the operation of the vehicle. A copy of the driver's license of each driver shall be submitted to the board at least 30 days prior to the individual operating a mobile dental facility or a portable dental operation.

(10) All mobile dental facilities or portable dental operations authorized in this section

which are a vehicle or which are to be towed or otherwise transported by another vehicle shall be registered in this state.

(11) The operator of a mobile dental facility or a portable dental operation shall not perform services on a minor without the signed consent from the parent or guardian which form shall be established by the board. The consent form shall inquire whether the prospective patient has received dental care from a licensed dentist within one year and if so, the consent form shall request the name, address, and phone number of the dental home. If the information provided to the operator does not identify a dental home for the prospective patient, the operator shall contact the Alabama Medicaid Agency for assistance in identifying a dental home for Medicaid eligible patients. If this information is provided to the operator, the operator shall contact the designated dental home by phone, facsimile, or electronic mail and notify the dental home of the prospective patient's interest in receiving dental care from the operator. If the dental home confirms that an appointment for the prospective patient is scheduled with the dentist, the operator shall encourage the prospective patient or his or her guardian to seek care from the dental home. The consent form shall document that the patient, or legal guardian, understands the prospective patient has an option to receive dental care from either the mobile dental facility or portable dental operation or his or her designated dental home if applicable. The consent form shall require the signature of a parent or legal guardian.

(12) Each operator of a mobile dental facility or a portable dental operation shall maintain a written or electronic record detailing for each location where services are performed all of the following information:

- a. The street address of the service location.
- b. The dates of each session.
- c. The number of patients served.
- d. The types of dental services provided and the quantity of each service provided.
- e. Any other information requested by rule of the board.

(13) The written or electronic record shall be made available to the board within 10 days of a request.

(14) Each mobile dental facility or a portable dental operation must possess all applicable county and city licenses or permits to operate at each location.

(d) The mobile dental facility or a portable dental operation shall comply with the following physical requirements and inspection criteria:

- (1) Ready access in a ramp or lift.
- (2) A properly functioning sterilization system.
- (3) Ready access to an adequate supply of potable water, including hot water.
- (4) A covered galvanized, stainless steel, or other noncorrosive container for deposit of refuse and waste materials.

(5) For operators applying for a certificate of registration after July 1, 2008, who have not been issued a certificate prior to that date, ready access to toilet facilities which shall be located within the mobile dental facility or portable dental operation. Operators applying for a certificate prior to July 1, 2008, are not required to meet this requirement. Any non-profit governmental entity operating a portable dental operation within an existing building shall only be required to have ready access to toilet facilities within the building.

(e) The mobile dental facility or a portable dental operation shall be inspected by the board or its representative prior to receiving a certificate of registration. Once registered, the mobile dental facility or a portable dental operation shall be subject to periodic unannounced audits and

inspections by the board.

(f) The mobile dental facility or a portable dental operation shall comply with the current recommendations for infection control practices for dentistry as promulgated by the Centers for Disease Control and any rule of the board relating to infection control or reporting in a dental office.

(g) The initial application for a certificate of registration shall include the full name, address, and telephone number of the dentists and dental hygienists working at the facility or operation. The initial application for a certificate of registration shall also include proof of insurance from a licensed insurance carrier that the operator has in force at least one million dollars (\$1,000,000) of general liability insurance. The operator shall be required to maintain one million dollars (\$1,000,000) of general liability insurance at all times for which the mobile dental facility or portable dental operation is licensed by the Board of Dental Examiners. Governmental entities which operate mobile dental facilities or portable dental operations shall not be required to have or maintain any amount of general liability insurance. The operator shall advise the board in writing within 15 days of any change in the employment of any dentist or dental hygienist working at the facility or operation.

(h) The operator shall notify the board in writing within 10 days of any change made relating to a dentist to whom patients are to be referred for follow-up care as provided in subdivision (6) of subsection (c).

(i) The operator shall notify the board in writing within 10 days of any change in the procedure for emergency follow-up care as provided in subdivision (6) of subsection (c).

(j) At the conclusion of each patient's visit to the mobile dental facility or a portable dental operation, the patient shall be provided with a patient information sheet which shall also be provided to any individual or entity to whom the patient has consented or authorized to receive or access the patient's records. The information sheet shall include at a minimum the following information:

(1) The name of the dentist or dental hygienist, or both, who performed the services.

(2) A description of the treatment rendered, including billing service codes and fees associated with treatment and tooth numbers when appropriate.

(3) If applicable, the name, address, and telephone number of any dentist to whom the patient was referred for follow-up care and the reason for such referral.

(4) The name, address, and telephone number, if applicable, of a parent or guardian of the patient.

(k) In the event a mobile dental facility or a portable dental operation is to be sold, the current operator shall inform the board and the Alabama Medicaid Agency, if the operator is an Alabama Medicaid enrolled provider, at least 10 days prior to the sale being completed and shall be required to disclose the purchaser to the board and the Alabama Medicaid Agency, if the operator is an Alabama Medicaid enrolled provider, via certified mail within 10 days after the date the sale is finalized. The operator of a mobile dental facility or a portable dental operation shall notify the board and the Alabama Medicaid Agency, if the operator is an Alabama Medicaid enrolled provider, at least 30 days prior to cessation of operation. Such notification shall include the final day of operation and a copy of the notification shall be sent to all patients and shall include the manner and procedure by which patients may obtain their records or transfer those records to another dentist. It is the responsibility of the operator to take all necessary action to insure that the patient records are available to the patient, a duly authorized representative of the patient, or a subsequent treating dentist. For purposes of this subsection, a patient shall mean any individual who has received any treatment or consultation of any kind

within two years of the last date of operation of the mobile dental facility or a portable dental operation.

(l) A mobile dental facility or a portable dental operation that accepts or treats a patient but does not refer patients for follow-up treatment when such follow-up treatment is clearly necessary, shall be considered to have abandoned the patient and will subject the operator and any dentist or dental hygienist, or both, who fails to provide the referenced follow-up treatment to disciplinary action by the board.

(m) In addition to the requirements of this section, any operator, dentist, or dental hygienist working or performing any services at a mobile dental facility or a portable dental operation shall be subject to the provisions of this chapter. Any violation of the provisions of this section shall subject the operator, dentist, or dental hygienist to the penalties provided in Section 34-9-18, and no order imposing penalties pursuant to Section 34-9-18 shall be made or entered except after notice and hearing by the board with any such order being subject to judicial review.

(n) The board may promulgate rules to implement and enforce the provisions of this section.

(o) The provisions of this section shall not apply to any existing Jefferson County Department of Health mobile dental facilities or portable dental operations that have been in service providing dental care within Jefferson County prior to December 31, 2007.

(p) This section shall not apply to any mobile dental facility or portable dental operation which is operated during a state of emergency declared by the Governor as authorized in Section 31-9-8.

(q) It is the express intent of the Legislature that no state agency, including, but not limited to, the Alabama Medicaid Agency, shall restrict any mobile dental facility or portable dental operation which complies with the provisions outlined herein and all applicable state and federal rules from participation in its programs.

(r) Notwithstanding any other provision of law, any entity which is approved as tax exempt under Section 501(c)(3) of the Internal Revenue Code and employs dentists licensed in this state shall continue to be able to employ dentists licensed in this state and to provide dental services in the same manner and under the same conditions as licensed on June 7, 2008.

CREDIT(S)

(Act 2008-279, p. 536, §§ 1, 3.)

§ 34-9-7. Exemption of certain practices and operations. *Current through the end of the 2010 Regular Session.*

Nothing in this chapter shall apply to the following practices, acts, and operations:

(1) The practice of his or her profession by a physician or surgeon holding a certificate of qualification as a medical doctor and licensed as such under the laws of this state, provided he or she shall not practice dentistry as a specialty.

(2) The practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States Army, Navy, Air Force, or other armed services, public health service (provided however, dentists, dental hygienists, and other personnel employed by any public health service which performs dental health care for the general public under programs funded in whole or part by the state or federal government shall be subject to all of the provisions of this chapter and the rules and regulations duly promulgated by the Board of Dental Examiners governing the practice of dentistry and dental hygiene in this state), Coast Guard, or Veteran's Administration.

(3) The practice of dentistry by a licensed dentist of other states or countries at meetings

of the Alabama Dental Association or components thereof, or other like dental organizations approved by the board, while appearing as clinicians, or when appearing in emergency cases upon the specific call of dentists duly licensed under this chapter.

(4) The filling of prescriptions of a licensed and registered dentist, as hereinafter provided, by any person or persons, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances on a model made by or from impressions taken by a licensed and currently registered dentist, to be used or worn as a substitute for natural teeth; provided, that the person or persons, association, corporation, or other entity, shall not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.

(5) The use of roentgen machines or other rays for making radiograms or similar records, of dental or oral tissues under the supervision of a licensed dentist or physician; provided, that the services shall not be advertised by any name whatever as an aid or inducement to secure dental patronage, and no person shall advertise that he or she has, leases, owns, or operates a roentgen machine for the purpose of making dental radiograms of the human teeth or tissues or the oral cavity, or administering treatments thereto for any disease thereof.

(6) The giving of a general anesthetic by a nurse anesthetist who administers a general anesthetic under the direct supervision of a duly licensed dentist to a patient who is undergoing dental treatment rendered by the dentist.

(7) The use of a nurse in the practice of professional or practical nursing, as defined in Sections 34-21-1 through 34-21-26, by a dentist.

(8) A dentist who engages in the practice of dentistry across state lines in an emergency, as defined by the board.

(9) A dentist who engages in the practice of dentistry across state lines on an irregular or infrequent basis. The "irregular or infrequent" practice of dentistry across state lines is considered to occur if the practice occurs less than 10 times in a calendar year or involves fewer than 10 patients in a calendar year, or the practice comprises less than one percent of the diagnostic or therapeutic practice of the dentist.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 1; Acts 1967, No. 729, p. 1564, § 1; Acts 1981, No. 81-372, p. 540, § 1; Act 99-402, p. 669, § 1.)

§ 34-9-7.1. Exemption of participation in continuing education course. *Current through the end of the 2010 Regular Session.*

The practice of dentistry by a dentist licensed in another state as a part of participation in a continuing education course conducted, taught, or supervised by the University of Alabama School of Dentistry or any other dental college, hospital, or institution in Alabama which is approved by the board is exempt from the licensing requirements of this chapter.

CREDIT(S)

(Act 2002-512, p. 1318, § 2.)

§ 34-9-8. Teaching permits. *Current through the end of the 2010 Regular Session.*

The board shall annually issue teaching permits to persons who are bona fide members of the

faculty of a dental college, if they hold a dental degree but are not licensed and registered to practice dentistry or dental hygiene in the state. The dean of any dental college located in the state shall annually certify to the board the bona fide members of the clinical faculty of the college who are not licensed and registered to practice dentistry or dental hygiene in the state. The board shall issue teaching permits to applicants upon the certification by the dean. The teaching permits shall be invalid if the holder ceases to be a member of the clinical faculty of the dental college. The dean of any dental college shall promptly notify the board regarding changes in the faculty which affect the eligibility of a faculty member to possess a teaching permit. The holder of a teaching permit shall be subject to this chapter and may perform all clinical operations which a person licensed to practice dentistry or dental hygiene in the state is entitled to perform. The operations may only be performed within the facilities of the dental college and as an adjunct to his or her teaching functions in the college. An annual fee established pursuant to this chapter shall be paid to the board when the teaching permit is issued.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 12; Acts 1979, No. 79-427, p. 668, § 1(a); Acts 1993, No. 93-159, p. 241, § 3.)

§ 34-9-9. Exercise of independent professional judgment by dentist; prohibited business arrangements or relationships; penalties. *Current through the end of the 2010 Regular Session.*

(a) No person other than a dentist licensed pursuant to this chapter may:

(1) Employ a dentist, dental hygienist, or both in the operation of a dental office;

(2) Place in the possession of a dentist, dental hygienist, or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment, or offices; or

(3) Retain the ownership or control of dental equipment, material, or office and make the same available in any manner for the use of a dentist, dental hygienist, or other agent.

(4) The term "person" as used in this section, shall not in any way pertain to state, county, municipal, or city institutions but shall be deemed to include any individual, firm, partnership, corporation, or other entity not licensed to practice dentistry in the State of Alabama.

(5) Nothing in this subsection shall apply to bona fide sales of dental equipment, material, or office secured by a chattel mortgage or retention title agreement, or to an agreement for the rental of the equipment or office by bona fide lease at a reasonable amount, and under which agreement the licensee under this chapter maintains complete care, custody, and control of the equipment and the practice. Further, nothing in this subsection shall prohibit or restrict persons, firms, or corporations from employing or retaining licensed dentists to furnish dental treatment for their employees or dependents of their employees.

(b) A prohibited business arrangement or relationship as defined in subsection (a) shall not be considered a violation of that subsection if a prohibited arrangement or relationship results from the death of a licensed dentist and is cured within 12 months of the date of the death.

(c) The purpose of this section is to prevent a non-dentist from influencing or otherwise interfering with the exercise of a dentist's independent professional judgment. In addition to the acts specified in subsection (a), no person, other than a dentist licensed in accordance with this chapter, shall enter into a relationship with a person licensed under this chapter pursuant to

which the unlicensed person exercises control over the following:

- (1) The selection of a course of treatment for a patient, the procedures or materials to be used as a part of such course of treatment, and the manner in which such course of treatment is carried out by the licensee;
 - (2) The patient records of a dentist;
 - (3) Policies and decisions relating to pricing, credit, refunds, warranties, and advertising;
- and
- (4) Decisions relating to office personnel and hours of practice.

(d) Any licensed dentist or dental hygienist who enters into any of the arrangements or relationships described in subsection (a) or subsection (c) with an unlicensed person as defined above, may be subject to any of the penalties set forth in Section 34-9-18.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 13; Acts 1981, No. 81-372, p. 540, § 2; Acts 1985, No. 85-697, p. 1120, § 1; Act 2009-18, p. 43, § 3.)

§ 34-9-10. Application; licensure by credentials; special purpose license. *Current through the end of the 2010 Regular Session.*

(a) Every person who desires to practice dentistry within the State of Alabama shall file an application prescribed by the board. Notwithstanding the method of obtaining licensure or any particular requirement set forth herein, every person as a prerequisite to licensure must be at least 19 years of age, of good moral character, a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, a graduate of a dental school or college accredited by the American Dental Association Commission on Dental Accreditation and approved by the board and must satisfy any other requirement set forth in any rule adopted by the board.

(b) Licensure by examination shall be applicable to the following categories:

(1) Those individuals who have never been licensed or taken an examination and whose application to take an examination administered or approved by the board is received by the board within 18 months of graduation from dental school.

(2) Those individuals who have successfully passed an examination approved but not administered by the board so long as an application for licensure is received by the board within 18 months of the date of notification of passing such examination. All applicants shall pay a fee which shall accompany the application.

(c) Any individual who possesses a current license in any state, who has passed an examination approved by the board and who has, since graduation from dental school, practiced or participated in a clinical residency or practiced dentistry in the Armed Forces or with the public health service shall be eligible for licensure if an application is received by the board within 18 months of the completion of the subject residency or Armed Forces or public health service commitment. All the above applicants shall pay a fee which shall accompany the application.

(d) Licensure by credentials may be utilized to evaluate the theoretical knowledge and clinical skill of a dentist or dental hygienist when an applicant for licensure by credentials holds a dental or dental hygiene license in another state. The board may promulgate rules and regulations relating to licensure by credentials in addition to any requirements by law. An applicant for licensure by credentials must meet all of the following:

- (1) The dentist or dental hygienist must have been engaged in the active practice of

clinical dentistry or clinical dental hygiene or in full-time dental or dental hygiene education for the five years or 5,000 hours immediately preceding his or her application.

(2) The applicant must hold a current, valid, unrevoked, and unexpired license in a state having examination standards regarded by the Board of Dental Examiners of Alabama as an equivalent to the Alabama standards.

(3) The board of examiners in the state of current practice must verify or endorse that the applicant's license is in good standing without any restrictions.

(4) The dentist or dental hygienist must not be the subject of a pending disciplinary action in any state in which the individual has been licensed which shall be verified by a query to the National Practitioner Data Bank, the Health Integrity Protection Data Bank, the American Association of Dental Boards Clearing House for Disciplinary Information, or any other pertinent bank currently existing or which may exist in the future.

(5) The applicant must provide a written statement agreeing to be interviewed at the request of the board.

(6) The individual must successfully pass a written jurisprudence examination.

(7) There must be certification from the United States Drug Enforcement Administration and from the state board of any state in which the applicant is or has been licensed that the DEA registration is not the subject of any pending disciplinary action or enforcement proceeding of any kind.

(8) The applicant must submit affidavits from two licensed dentists or two licensed dental hygienists practicing in the same geographical area where the applicant currently is practicing or teaching attesting to the applicant's moral character, standing, and ability.

(9) The applicant must provide the board with an official transcript with school seal from the school of dentistry or school of dental hygiene which issued the applicant's professional degree or execute a request and authorization allowing the board to obtain the transcript.

(10) The applicant must be a graduate of a dental or dental hygiene school, college, or educational program approved by the board.

(11) The applicant must not be the subject of any pending or final action from any hospital revoking, suspending, limiting, modifying, or interfering with any clinical or staff privileges.

(12) The applicant must not have been convicted of a felony or misdemeanor involving moral turpitude or of any law dealing with the administering or dispensing of legend drugs, including controlled substances.

(13) The board may consider or require other criteria including, but not limited to, any of the following:

- a. Questioning under oath.
- b. Results of peer review reports from constituent dental societies or federal dental services.
- c. Substance abuse testing or treatment.
- d. Background checks for criminal or fraudulent activities.
- e. Participation in continuing education.
- f. A current certificate in cardiopulmonary resuscitation.
- g. Recent case reports or oral defense of diagnosis and treatment plans.
- h. Proof of no physical or psychological impairment that would adversely affect the ability to practice dentistry or dental hygiene with reasonable skill and safety.
- i. An agreement to initiate practice within the State of Alabama within a period of one year.

j. Proof of professional liability coverage and that coverage has not been refused, declined, cancelled, nonrenewed, or modified.

k. Whether the applicant has been subject to any final disciplinary action in any state in which the individual has been licensed which shall be verified by a query in the National Practitioner Data Bank, the Health Integrity Protection Data Bank, the American Association of Dental Boards Clearing House for Disciplinary Information, any state where the applicant has been licensed, or any other pertinent bank currently existing or which may exist in the future.

l. Whether the applicant's DEA registration or any state controlled substances permit has ever been revoked, suspended, modified, restricted, or limited in any way. Provided, however, that any discipline that results only from a failure to timely renew a registration or permit shall not prevent an applicant from being eligible for this method of licensure.

(14) If all criteria and requirements are satisfied and the board determines, after notice and hearing, that the individual committed fraud or in any way falsified any information in the application process, the license may be revoked by the board.

(15) In addition to the requirements for applicants seeking licensure by credentials, an applicant desiring to practice a specialty only must meet the following requirements:

a. The specialty must be one in a branch of dentistry approved by the American Dental Association.

b. The applicant must meet the existing educational requirements and standards set forth by the American Dental Association for that approved specialty.

c. An applicant who chooses to announce or practice a specialty must limit his or her practice exclusively to the announced special area or areas of dental practice.

d. If an applicant who is initially licensed by credentials for a specialty practice decides to renounce his or her specialty and practice general dentistry, and the license originally issued did not require a general dental license but rather a specialty license, or the applicant originally passed only a specialty examination, the applicant may not practice general dentistry until he or she successfully passes the board's regular general dentistry examination. However, if the applicant has passed a general dentistry examination or has a general dentistry license, was practicing a specialty, and decides not to continue that specialty and practice only general dentistry, the applicant is eligible for licensure by credentials as a general dentist.

(e) Notwithstanding the provisions of subsection (a), the board shall issue a special purpose license to practice dentistry across state lines to an applicant who has met the following requirements:

(1) The applicant holds a full and unrestricted license to practice dentistry in any state of the United States or in territories, other than the State of Alabama, in which the individual is licensed.

(2) The applicant has not had any disciplinary action or other action taken against him or her by any state or licensing jurisdiction. If there has been previous disciplinary or other action taken against the applicant, the board may issue a certificate of qualification if it finds that the previous disciplinary or other action indicates that the dentist is not a potential threat to the public.

(3) The applicant submits an application for a certificate of qualification for a special purpose license to practice dentistry across state lines on a form provided by the board, remits an application fee in an amount established by the board, and pays a fee.

(f) A special purpose license issued by the board to practice dentistry across state lines limits

the licensee solely to the practice of dentistry across state lines. The special purpose license shall be valid for a period of three years, shall expire on a renewal date established by the board in the third calendar year after its issuance, and may be renewed upon receipt of a renewal fee as established by the board. Failure to renew a license according to the renewal schedule established by the board shall result in the automatic revocation of the special purpose license to practice dentistry across state lines. An applicant may reapply following automatic revocation for failure to renew. The applicant shall meet the qualifications of subsection (e) in order to be eligible for renewal of the license.

(g) Notwithstanding the provisions of this section, the board shall only issue a special purpose license to practice dentistry across state lines to an applicant whose principal practice location and license to practice are located in a state or territory of the United States whose laws permit or allow for the issuance of a special purpose license to practice dentistry across state lines or similar license to a dentist whose principal practice location and license are located in another state. It is the stated intent of this section that dentists who hold a full and current license in the State of Alabama be afforded the opportunity to obtain, on a reciprocal basis, a license to practice dentistry across state lines in any other state or territory of the United States as a precondition to the issuance of a special purpose license as authorized by this section to a dentist licensed in the other state or territory. The board shall determine which states or territories have reciprocal licensure requirements meeting the qualifications of this section.

(h) Any individual who does not qualify for licensure pursuant to any of the above subsections but who has passed an examination approved by the board and possesses a current license in another state is eligible to apply for licensure upon payment of a fee. The board shall have discretion whether to require an examination for any such individual, including the time, place, type, and content of any such examination.

(i) A current license shall mean one in good standing authorizing the individual to practice in the state of issuance.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 14; Acts 1979, No. 79-427, p. 668, § 1(b); Act 99-402, p. 669, § 1; Act 2002-512, p. 1318, § 1; Act 2003-391, p. 1100, § 1; Act 2009-18, p. 43, § 3; Act 2010-262, § 1.)

§ 34-9-11. Examination of applicants; issuance of licenses. *Current through the end of the 2010 Regular Session.*

When application and accompanying proof as are required herein are found satisfactory, the board shall notify the applicant to appear for examination at a time and place to be fixed by the board, and each applicant shall be examined and graded by number in lieu of name. All examinations provided for in this chapter shall be approved by the board and shall be of such type and character as to test the qualifications of the applicant to practice dentistry. It is provided, however, that the board may recognize any written parts of an examination given by the Joint Commission on National Dental Examinations in lieu of such examinations or subject to such examinations as the board may approve. Those found qualified by the board shall be granted a license and a license certificate which shall bear a serial number, the full name of the licensee, the date of issuance, and the seal of the board, and shall be signed by each member of the board.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 15; Acts 1985, No. 85-697, p. 1120, § 1; Act 2009-18, p. 43, §

3.)

§ 34-9-12. Recording, reporting requirements. *Current through the end of the 2010 Regular Session.*

(a) Every person granted a license to practice dentistry or dental hygiene in this state by the Board of Dental Examiners of Alabama, as herein provided, shall cause his or her license certificate to be recorded in the office of the judge of probate of the county in which he or she desires to practice before beginning the practice of dentistry or dental hygiene in the county. Any person receiving a license from the board, whether or not intending to immediately engage in the practice of dentistry or dental hygiene in this state, shall cause his or her license certificate to be recorded in the office of the judge of probate in one of the counties of this state within 60 days of the issuance of the license certificate.

(b) Every person issued a special purpose license to practice dentistry across state lines shall be subject to the jurisdiction of the board, and all rules and regulations of the board, including all matters relating to discipline. It shall be the affirmative duty of every special purpose licensee to report to the board in writing within 15 days of the initiation of any disciplinary action against the licensee to practice dentistry by any state or territory in which the licensee is licensed. In addition, the licensee agrees, by acceptance of the license, to produce any patient records or materials as requested by the board or to appear before the board or any of its committees following receipt of a written notice issued by the board. The notice may be issued by the board. The failure of a special purpose licensee to report, produce records, or appear as set forth above shall subject the licensee to the disciplinary penalties as set forth in Section 34-9-5.

(c) Every person issued a special purpose license to practice dentistry across state lines shall comply with all laws, rules, and regulations governing the maintenance of patient records, including patient confidentiality requirements, regardless of the state where the records of any patient within this state are maintained.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 16; Act 99-402, p. 669, § 1.)

§ 34-9-13. License and registration certificates to be kept in office of practitioner. *Current through the end of the 2010 Regular Session.*

Every practitioner of dentistry and dental hygiene within the meaning of this chapter shall have in his possession a license certificate and an annual registration certificate in the office wherein he practices.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 17.)

§ 34-9-14. Change of address generally. *Current through the end of the 2010 Regular Session.*

Every licensed dentist and dental hygienist upon changing his or her place of practice, whether from one building, city, street address, or county to another, shall within 30 days thereafter furnish the secretary-treasurer of the board with the new address. The secretary-treasurer shall acknowledge receipt of change of address within 30 days.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 18.)

§ 34-9-15. Annual registration; continuing education. *Current through the end of the 2010 Regular Session.*

(a) No person shall practice dentistry in the State of Alabama unless licensed by the board and registered annually as required by this chapter. The secretary-treasurer of the board shall mail to each licensee an initial registration form which shall contain space for the insertion of name, address, date, and number of license certificate, and other information as the board shall deem necessary. The licensee shall sign and verify the accuracy of the registration before a notary public after which he or she shall forward the registration to the secretary-treasurer of the board together with a fee. Each subsequent registration shall be made upon the form as above prescribed except that it need not be verified. On or before October 1 of each year, every dentist licensed to practice dentistry in the state shall transmit to the secretary-treasurer of the board the completed form prescribed by the board, together with a fee established by the board pursuant to this chapter, and receive therefor the current annual registration certificate authorizing him or her to continue the practice of dentistry in the state for a period of one year. Any license and license certificate previously granted under the authority of this chapter or any prior dental practice act shall automatically be suspended if the holder thereof fails to secure the annual registration certificate before January 1, each year. Any dentist whose license is automatically suspended by reason of failure, neglect, or refusal to secure the annual registration certificate shall be reinstated by the board upon payment of the penalty fee plus all accrued annual registration fees up to a maximum of five years, accompanied with the prescribed form for annual registration of the license. Upon failure of any licensee to file application for the annual registration certificate and pay the annual registration fee on or before November 30, each year, the board shall notify the licensee by mail addressed to the last address of record that the application and fee have not been received and that, unless the application and fee are received on or before the first day of January, the license and license certificate shall be automatically suspended. The board shall notify the licensee by mail addressed to the last address of record of the effective date of the automatic suspension and the provisions for registration of the license. The board shall waive the annual payment of fees herein provided for and issue a current annual registration certificate to any licensee who, because of age or physical disability, has retired from the practice of dentistry or who is suffering a malady of a lingering or permanent nature. The board by rule shall waive annual registration and the payment of fees while any licensee is on temporary active duty with any of the Armed Forces of the United States. The waiver of fees herein provided shall be effective so long as the retirement because of age or physical disability or temporary active duty continues.

(b) The board shall adopt and promulgate rules and regulations for the adoption of a program of continuing education for its licensees by October 1, 1991. After that date, the successful completion of continuing education program requirements shall be a requisite for renewal of licenses issued pursuant to this chapter.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 18; Acts 1965, 3rd Ex. Sess., No. 25, p. 232, § 1; Acts 1979, No. 79-427, p. 668, § 1(c); Acts 1989, No. 89-407, p. 868, § 3; Acts 1993, No. 93-159, p. 241, § 3; Acts 1997, No. 97-701, p. 1418, § 1; Act 2003-391, p. 1100, § 1; Act 2009-18, p. 43, § 3.)

§ 34-9-15.1. Release of records. *Current through the end of the 2010 Regular Session.*

(a) Upon the request of a patient or authorized agent of a patient, a dentist shall promptly

release to the patient or his or her authorized agent legible and accurate copies of all records of the patient regardless of how they are generated or maintained. The reasonable costs of reproducing copies shall not be more than the amounts authorized by statute and in the absence of any statutory authority no more than the actual cost of the reproduction.

(b) The release of records under this section shall not be made contingent upon the payment of any fee or charge owed by the patient.

(c) The provisions of the section shall survive the closing of a dental office or practice for any reason, including, but not limited to, any disciplinary action, retirement, disability, or death.

CREDIT(S)

(Act 2009-18, p. 43, § 4.)

§ 34-9-16. Fee schedule. *Current through the end of the 2010 Regular Session.*

The board shall establish and collect reasonable fees provided for in this chapter within the ranges set forth below and without having to engage in the rulemaking process:

Description	Not Less Than	Not More Than
Dental Examination Application Fee	\$200.00	\$ 750.00
Dental Examination Fee	\$100.00	\$2,500.00
Dental Examination Materials Fee	\$200.00	\$ 500.00
Dental Licensure by Credentials Application Fee	\$100.00	\$4,000.00
Dental Licensure by Regional Exam Application Fee	\$100	\$1,000.00
Special Purpose Licensure Fee	\$200.00	\$ 750.00
Dental Annual Registration Fee	\$130.00	\$ 500.00
Dental License Reinstatement Penalty	\$250.00	\$ 500.00
Dental Hygiene Program Application Fee	\$ 50.00	\$ 500.00
Alabama Dental Hygiene Training Permit Fee	\$ 0.00	\$ 450.00
Alabama Dental Hygiene Training Education Fee	\$175.00	\$ 600.00
Alabama Dental Hygiene Program Instructor Certification Course Fee	\$ 75.00	\$ 200.00
Alabama Dental Hygiene Program Instructional Materials Fee	\$500.00	\$ 950.00
Dental Hygiene By Regional Exam Application Fee	\$ 55.00	\$ 75.00
Dental Hygiene Examination Application Fee	\$ 50.00	\$ 500.00
Dental Hygiene Examination Fee	\$100.00	\$ 600.00
Dental Hygiene Examination Materials Fee	\$100.00	\$ 400.00
Dental Hygiene Licensure by Credentials Fee	\$ 0.00	\$2,000.00
Dental Hygiene Annual Registration Fee	\$ 55.00	\$ 75.00
Dental Hygiene License Reinstatement Penalty	\$100.00	\$ 200.00
License Certificate Fee	\$ 25.00	\$ 500.00
Duplicate License Fee	\$ 25.00	\$ 150.00
Dental Faculty Teaching Permit Fee	\$150.00	\$ 350.00
Alabama Controlled Substance Permit Fee	\$125.00	\$ 400.00
Alabama Controlled Substance Permit Renewal Fee	\$100.00	\$ 400.00
General Anesthesia Permit Fee	\$900.00	\$1,500.00
General Anesthesia Permit Renewal Fee	\$200.00	\$ 750.00
Parenteral Sedation Permit Fee	\$900.00	\$1,500.00
Parenteral Sedation Permit Renewal Fee	\$200.00	\$ 750.00
Oral Conscious Sedation Permit Fee	\$100.00	\$ 250.00
Oral Conscious Sedation Permit Renewal Fee	\$ 50.00	\$ 250.00
Mobile Dental Application/Inspection Fee	\$750.00	\$1,500.00
Mobile Dental Renewal Fee	\$250.00	\$1,500.00

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 20; Acts 1965, 3rd Ex. Sess., No. 25, p. 232; Acts 1979, No. 79-427, p. 668, § 1(d); Acts 1989, No. 89-407, p. 868, § 3; Acts 1993, No. 93-159, p. 241, § 3; Act 98-279, p. 457, § 1; Act 99-402, p. 669, § 1; Act 2009-18, p. 43, § 5; Act 2010-262, § 1.)

§ 34-9-17. Use of names. *Current through the end of the 2010 Regular Session.*

(a) Any person or persons may practice or offer to practice dentistry in connection with any dental office or offices by or under the use of a name other than their own provided their name or names as they appear on their license certificate granted to him or them as a dentist pursuant to this chapter appear in a reasonably dignified manner either following or beneath any name selected and further provided that such person or persons are personally present in their office or offices operating as a dentist or personally overseeing such operations as they are performed in their office or each of their offices. When an associate in practice is on temporary active duty with the armed forces, his or her name may continue to appear in connection with the practice of dentistry at any office or offices. Nothing herein shall allow or permit any person or persons to select a name that suggests or implies a nonprofit or charitable activity. The violation of any of the provisions of this subsection by any dentist may subject such dentist to any of the penalties outlined in Section 34-9-18.

(b) It shall be unlawful for a licensee to permit his or her name to appear in any manner on, within, or in connection with any office which he or she has sold to another licensee and from which he or she has severed active practice, provided the name of the dentist who sells his or her office to a licensed dentist, or in the event of the death of a licensee, the name of the deceased dentist, may remain in the office for a period not to exceed 12 months and it shall also be unlawful for the buyer to permit the former owner's name or the deceased's license to appear in any manner on, within, or in connection with the office, except as herein provided. The violation of any of the provisions of this subsection by any dentist may subject such dentist to the penalties outlined in subsection (b) of Section 34-9-18.

(c) Nothing in this section shall be so construed as to prevent two or more licensed dentists from associating together for the practice of dentistry.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 21; Acts 1985, No. 85-697, p. 1120, § 1; Act 2009-18, p. 43, § 5.)

§ 34-9-18. Grounds for disciplinary action. *Current through the end of the 2010 Regular Session.*

(a) The board may invoke disciplinary action as outlined in subsection (b) hereof whenever it shall be established to the satisfaction of the board, after hearing as hereinafter provided, that any dentist or dental hygienist has been guilty of the following:

- (1) Fraud, deceit, or misrepresentation, whether knowingly or unknowingly, in obtaining any license, license certificate, annual registration certificate, money, or other thing of value.
- (2) Gross immorality.
- (3) Is a menace to the public health or to patients or others by reason of a disease.
- (4) Is an habitual user of intoxicants or drugs rendering him or her unfit for the practice of dentistry or dental hygiene.
- (5) Has been convicted for violation of federal or state narcotics or barbiturate laws.
- (6) Is guilty of gross negligence, as defined by the board, in the practice of dentistry or

dental hygiene.

(7) Is guilty of employing, allowing, or permitting any unlicensed person or persons to perform any work in his or her office which, under this chapter, can only be legally done by a person or persons holding a license to practice dentistry or dental hygiene.

(8) Willfully or negligently violates the rules of the State Department of Health or of the board regarding sanitation.

(9) Is guilty of division of fees, or agreeing to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or his or her legal representative, except the division of fees between dentists practicing in a partnership and sharing professional fees, or in case of one licensed dentist employing another.

(10) Is guilty of professional connection or association with or lending his or her name to anyone who is engaged in the illegal practice of dentistry.

(11) Conviction in any court of competent jurisdiction of a felony or a misdemeanor involving moral turpitude.

(12)a. A dental hygienist using or attempting to use in any manner whatsoever any prophylactic list, call list, records, reprints, or copies of same, or information gathered therefrom, of the names of patients whom the dental hygienist served in the office of a prior employer, unless the names appear upon the bona fide call or prophylactic list of his or her present employer and were caused to appear through the legitimate practice of dentistry as provided for in this chapter.

b. A licensed dentist who aids or abets or encourages a dental hygienist employed by him or her to make use of a so-called prophylactic list or the calling by telephone or by the use of letters transmitted through the mails to solicit patronage from patients formerly served in the office of any dentist employing the hygienist or nurse.

(13) Pertaining to licensed dentists only, the prescribing, administering or dispensing of any controlled substances enumerated in Schedules I through V contained in the Alabama Uniform Controlled Substances Act, Chapter 2 of Title 20, or any amendment or successor thereto, for any person not under his or her treatment in the regular practice of his or her profession, or veteran's administration.

(14) Irregularities in billing an insurance company or other third party payer for services rendered to a patient.

For the purposes of this section irregularities in billing shall include: Reporting charges for the purpose of obtaining a total payment in excess of that usually received by the dentist for the services rendered; falsely reporting treatment dates for the purpose of obtaining payment; falsely reporting charges for services not rendered; falsely reporting services rendered for the purpose of obtaining payment; or failing to advise any third party payer that the copayment provisions of a contract have been abrogated by accepting the payment received from the third party payer as full payment.

(15) Violating any rule or regulation adopted by the Board of Dental Examiners.

(16) Has had his or her license to practice dentistry or dental hygiene from another state suspended or revoked based upon acts similar to those described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation shall be conclusive evidence thereof.

(17) Violating any provision of this chapter.

(b) When the board finds any dentist or dental hygienist guilty of any of the grounds set forth in subsection (a), it may enter an order imposing one or more of the following penalties:

(1) Refuse to issue the dentist or dental hygienist license or license certificate provided for in this chapter.

(2) Revoke the license of any dentist or dental hygienist.

(3) Suspend the license of any dentist or dental hygienist.

(4) Enter a censure.

(5) Issue an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the dentist or dental hygienist.

(6) Imposition of an administrative fine not to exceed one thousand two hundred fifty dollars (\$1,250) for each count or separate offense.

(7) Imposition of restrictions on the scope of practice.

(8) Imposition of peer review or professional education requirements.

(9) Assessment of the costs of the disciplinary proceedings.

(c) Failure to comply with any final order of the board, including, but not limited to, an order of censure or probation, is cause for suspension or revocation of a license.

(d) No disciplinary action as outlined in subsection (b) or (c) hereof shall be invoked or entered except after hearing by the board as provided in this chapter, and such order is subject to judicial review as provided by this chapter.

No order of suspension or revocation provided in this section shall be made or entered except after hearing by the board as provided in this chapter, and the order shall be subject to judicial review as provided by this chapter.

(e) The board may temporarily suspend a special purpose license to practice dentistry across state lines without a hearing on either of the following grounds:

(1) The failure of the licensee to appear or produce records or materials as requested by the board.

(2) The initiation of a disciplinary action against the licensee by any state or territorial licensing jurisdiction in which the licensee holds a license to practice dentistry.

Notwithstanding any other provision of law, including the Alabama Administrative Procedure Act, the temporary suspension provided herein shall remain in effect until either the licensee has complied with the request of the board or the disciplinary action pending against the licensee has been terminated in favor of the licensee and the temporary suspension has been terminated by a written order of the board. A special purpose license to practice dentistry across state lines is subject to each of the grounds for disciplinary action provided in this section in accordance with the procedures of Section 34-9-24 and the Alabama Administrative Procedure Act.

(f) Members of the Board of Dental Examiners, any agent, employee, consultant, or attorney for the board, and the members of any committee of dentists or dental hygienists impaneled by the board, shall be immune from suits for any conduct in the course of their official duties with respect to investigations or hearings; provided, that the persons act without malice and in good faith that such investigations or hearings are warranted by the facts, known to them after diligent effort to obtain the facts of the matter relative to the investigations or hearings.

(g) Nothing in this chapter shall be interpreted to limit or restrict the authority of the board to discipline any dentist licensed to practice in this state who violates this chapter while engaging in the practice of dentistry within this or any other state.

(h) The board shall have the authority to adopt rules imposing a non-disciplinary administrative penalty for designated violations of the Alabama Dental Practice Act.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 22; Acts 1981, No. 81-372, p. 540, § 3; Acts 1985, No. 85-697,

p. 1120, § 1; Acts 1986, No. 86-498, p. 950, § 1; Act 99-402, p. 669, § 1; Act 2005-73, p. 106, § 3; Act 2009-18, p. 43, § 5.)

§ 34-9-19. Advertising--Dentist; specialty requirements; practice emphasis; purpose of section; rules and regulations. *Current through the end of the 2010 Regular Session.*

(a) For the purpose of this section, the following terms shall have the respective meanings:

(1) Advertisement. An advertisement is information communicated in a manner designed to attract public attention to the practice of a dentist as heretofore defined.

(2) Dentist. Any person licensed to practice dentistry in this state pursuant to this chapter or any entity authorized by law which is formed for the purpose of practicing dentistry.

(3) False. A false statement or claim is one which:

a. Contains a material misrepresentation of fact or law.

b. Omits a material fact rendering the statement or claim when considered as a whole false.

(b) A dentist shall have ultimate responsibility for all advertisements which are approved by him or her or his or her agents or associates and the dentist shall be responsible for the following:

(1) Broadcast advertisements shall be recorded, approved by the dentist, and a recording of the actual transmission shall be retained by the dentist for one year following the final appearance or use of the advertisement. The dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(2) Written or printed advertisements shall be approved by the dentist and a copy of the publication in which the advertisement is displayed shall be retained by the dentist for one year following the final appearance or use of the advertisement. The dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(3) Other forms of advertisement shall be approved by the dentist and the contents and specifications, where applicable, shall be retained by the dentist for one year following the final appearance or use of the advertisement and the dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(c) A dentist may not hold himself or herself out as a specialist or advertise specialty status unless the specialty is approved by the American Dental Association.

(d) Dentists who are not specialists in specialties approved by the American Dental Association may nevertheless advertise that their practice is limited to a specific area of dentistry only if the dentist has obtained membership in or otherwise has been credentialized by an accrediting organization which is recognized by the board as a bona fide organization for such an area of practice.

(e) Notwithstanding any provision of this section to the contrary, a dentist licensed pursuant to this chapter may not hold himself or herself out as a specialist or advertise membership in a specialty recognized by an accrediting organization, unless the dentist has continuously held himself or herself out as a specialist since December 31, 1964, in a specialty recognized by the American Dental Association or has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation and meets either of the following qualifications:

(1) Is eligible for examination by a national specialty board recognized by the American Dental Association.

(2) Is a diplomate of a national specialty board recognized by the American Dental

Association.

(f) A dentist licensed under this chapter may not represent to the public without appropriate disclosure that his or her practice is limited to a specific area of dentistry other than a specialty area of dentistry authorized under subsection (e) unless the dentist has attained membership in or has otherwise been credentialed by an accrediting organization which is recognized by the board as a bona fide organization for such an area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under subsection (c), the organization must condition membership or credentialing of its members upon all of the following:

(1) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university-based dental school that is beyond the dental degree, is at the graduate or postgraduate level, and is of at least 12 months in duration.

(2) Prior didactic training and clinical experience in the specific area of dentistry which is greater than that of other dentists.

(3) Successful completion of oral and written examinations based on psychometric principles.

(g) Notwithstanding the requirements of subsections (e) and (f), a dentist who lacks membership in or certification, diplomate status, or other similar credentials from an accrediting organization approved as bona fide by either the American Dental Association or the board may announce a practice emphasis in any other area of dental practice if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement the following statement: " _____ (NAME OF ANNOUNCED AREA OF DENTAL PRACTICE) IS NOT RECOGNIZED AS A SPECIALTY AREA BY THE AMERICAN DENTAL ASSOCIATION OR THE BOARD OF DENTAL EXAMINERS OF ALABAMA." If such an area of dental practice is officially recognized by an organization which the dentist desires to acknowledge or otherwise reference in the dentist's announcement, solicitation, or advertisement, the same announcement, solicitation, or advertisement shall also state prominently: " _____ (NAME OF REFERENCED ORGANIZATION) IS NOT RECOGNIZED AS A BONA FIDE SPECIALTY ACCREDITING ORGANIZATION BY THE AMERICAN DENTAL ASSOCIATION OR THE BOARD OF DENTAL EXAMINERS OF ALABAMA."

(h) The purpose of this section is to prevent a dentist from advertising without appropriate disclosure membership in an organization which may be perceived by the public as recognizing or accrediting specialization or other unique competencies in an area of dentistry that is not recognized or accredited by the American Dental Association or the board in accordance with this section. The purpose of this section is also to prohibit a dentist from advertising a specialty or other area of dental practice without appropriate disclosure unless the special competencies held by the dentist satisfy the requirements of subsections (d) and (f). The Legislature finds that dental consumers can reasonably rely on these requirements as satisfactory evidence of a dentist's attainment of meaningful competencies in the specialty or other bona fide area of dental practice advertised. The Legislature also finds that this process for the recognition of dental specialties and other bona fide areas of dental practice is the least restrictive means available to ensure that consumers are not misled about a dentist's unique credentials.

(i) A dentist who lacks membership in or certification, diplomate status, or similar credentials from an accrediting organization approved as bona fide by either the American Dental Association or the board may announce a practice emphasis in any other area of dental practice if the dentist incorporates the disclaimer set forth in subsection (g).

(j) The board shall promulgate rules and regulations delineating examples of advertising which would be considered false, fraudulent, misleading, or deceptive.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 23; Acts 1981, No. 81-372, p. 540, § 4; Acts 1985, No. 85-697, p. 1120, § 1; Acts 1988, 1st Ex. Sess., No. 88-854, p. 327, § 1; Acts 1997, No. 97-701, p. 1418, § 1; Act 2003-391, p. 1100, § 1; Act 2004-484, p. 901, § 2; Act 2009-18, p. 43, § 5.)

§ 34-9-19.1. Advertising--Dental referral service; requirements; prohibitions; penalties.

Current through the end of the 2010 Regular Session.

(a) For purposes of this section, the following words shall have the following meanings:

(1) Advertisement. Information communicated in a manner designed to attract public attention to a referral service, participating dentist, or a practice of dentistry.

(2) Dental referral service. A person, firm, partnership, association, corporation, agent, or employee of any of the foregoing that engages in any business or service for profit that in whole or in part includes the referral or recommendation of persons to a dentist for any form of dental care or treatment.

(3) Dentist. Any person licensed to practice dentistry or any entity authorized by law which is formed for the purpose of practicing dentistry.

(4) False, fraudulent, misleading, or deceptive statement. A statement or claim having one or more of the following characteristics:

a. One that contains a misrepresentation of fact.

b. One that is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts.

c. One that is intended or is likely to create a false or unjustified expectation of favorable results.

d. One that implies unusual superior dental ability.

e. One that contains other representations or implications that in reasonable probability will cause an ordinary and prudent person to misunderstand or be deceived.

(5) Participating dentist. A dentist who has paid a fee to the dental referral service in order to be included on its referral service.

(b) A dental referral service shall not participate in the advertising of or operate a dental referral service unless all of the following conditions are met:

(1) The patient referrals by the dental referral service result from patient-initiated responses to the service's advertising.

(2) The dental referral service discloses to any prospective patient who makes contact with the service that the participating dentists have paid a fee for participation in the service.

(3) The dental referral service does not impose a fee on the participating dentists dependent on the number of referrals or amount of professional fees paid by the patient to the dentist.

(4) Participating dentists charge no more than their usual and customary fees to any patient referred.

(5) The dental referral service registers with the Board of Dental Examiners of Alabama providing all the following information:

a. Name.

b. Street address.

- c. Mailing address.
- d. Telephone number.
- e. Name of registered agent or person responsible for the operation of the dental referral service.
- f. Listing of other states where the dental referral service is registered.
- g. A copy of the standard form contract that regulates its relationship with participating dentists.

(c) Participating dentists shall not enter into a contract or other form or agreement to accept for dental care or treatment a person referred or recommended for the care or treatment by a dental referral service unless the dental referral service meets all the requirements of this section.

(d) A dental referral service that advertises shall include in each advertisement in legible or audible language, or both, a disclaimer containing all the following statements or information that:

- (1) The participating dentist of the dental referral service is a dentist who has paid a fee to participate in the service.
- (2) The advertisement is paid for by participating dentists.
- (3) No representation is made about the quality of the dental services to be performed or the expertise of the participating dentists.
- (4) Participating dentists are not more or less qualified than dentists who are not participating in the service.

(e) Dental referral service advertisements shall not do any of the following:

- (1) Advertise or solicit patients in a manner that contains a false, fraudulent, misleading, or deceptive statement in any material respect.
- (2) Publish or circulate, directly or indirectly, any false, fraudulent, misleading, or deceptive statement as to the skill or methods of practice of any participating dentist.
- (3) Contain a statement or make a recommendation that the dental referral service provides referrals to the most qualified dentists or dental practices.
- (4) Contain a review process or a screening.
- (5) Contain qualifications or information verification that misleads the public into thinking a participating dentist has obtained special recognition or joined a selective group of licensed dentists by being a participating dentist in the dental referral service.

(f) A violation of Sections 34-9-15, 34-9-19, 34-9-28, or this section, including, but not limited to, advertising in any manner which is false, fraudulent, misleading, or deceptive, shall subject a participating dentist to possible administrative disciplinary actions outlined in Section 34-9-18, after notice and hearing by the Board of Dental Examiners of Alabama and the opportunity for judicial review as provided in this article.

CREDIT(S)

(Acts 1997, No. 97-701, p. 1418, § 2; Act 2003-391, p. 1100, § 1.)

§ 34-9-20. Unauthorized advertising, selling or offering of dental services and appliances; injunctions. *Current through the end of the 2010 Regular Session.*

Any person, which word when used in this section shall include all legal entities not licensed to practice dentistry in this state, who shall advertise in any manner to the general public that he or she can or will sell, supply, furnish, construct, reproduce, or repair prosthetic dentures, bridges, plates or other appliances to be used or worn as substitutes for natural teeth, or for the regulation thereof, shall be guilty of a misdemeanor, and the circuit courts shall have jurisdiction

to enjoin such person from so doing.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 24; Acts 1981, No. 81-372, p. 540, § 5.)

§ 34-9-21. Employing services of commercial dental laboratory or private technician.

Current through the end of the 2010 Regular Session.

Every duly licensed and registered dentist who employs the services of a commercial dental laboratory or private technician for the purpose of constructing, altering, repairing, or duplicating any denture, plate, crown, partial plate, bridge, splint, orthodontic, or prosthetic appliance shall be required to furnish the commercial dental laboratory or private technician an impression or model taken by the dentist when necessary, together with a prescription setting forth the following:

- (1) The name and address of the commercial dental laboratory or private dental technician;
- (2) The patient's name or identification number, and if a number is used the patient's name shall be written upon the duplicate copy of the prescription retained by the dentist;
- (3) The date on which the prescription was written;
- (4) A description of the work to be done, with diagram if necessary;
- (5) A specification of the type and quality of materials to be used; and
- (6) The signature of the dentist and his or her license number.

Such prescription shall be made in duplicate form. The duplicate copy shall be retained in a permanent file for a period of two years by the dentist, and the original copy shall be retained on a permanent file for a period of two years by the commercial dental laboratory or private technician. Such permanent file of prescriptions to be kept by such dentists, commercial dental laboratory, or private technician shall be open to inspection at any reasonable time by the board or its duly constituted agent. Failure of the dentist, commercial dental laboratory, or private technician to keep such permanent records of prescriptions which are identifiable with each denture, plate, partial plate, bridge, splint, orthodontic, or prosthetic appliance shall be prima facie evidence of a violation of this chapter and shall constitute and be punishable as a misdemeanor.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 25.)

§ 34-9-22. Sale, offer to sell, procurement or alteration of diploma or certificate; fraud or cheating. *Current through the end of the 2010 Regular Session.*

Whoever sells or offers to sell a diploma conferring a dental degree, or a license certificate or annual registration certificate granted pursuant to this chapter or prior dental act, or procures such diploma or license certificate or annual registration certificate with intent that it shall be used as evidence of the right to practice dentistry or dental hygiene as defined by law, by a person other than the one upon whom it was conferred or to whom such license certificate or annual registration certificate was granted, or with fraudulent intent alters such diploma or license certificate or annual registration certificate, or uses or attempts to use it when it is so altered shall be deemed guilty of a misdemeanor. The board may impose any of the penalties outlined in Section 34-9-18 against any person found guilty of making a false statement or

cheating, or of fraud or deception either in applying for a license, a license certificate, or annual registration or in taking any of the examinations provided for herein.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 26; Acts 1985, No. 85-697, p. 1120, § 1.)

§ 34-9-23. Title and letters signifying degree. *Current through the end of the 2010 Regular Session.*

Any licensed dentist of this state being a graduate of a reputable dental school or college recognized by the board shall have the right to use the title "doctor" or abbreviation thereof before his or her name, or appended to his or her name the letters "D.D.S.," "D.M.D.," or equivalent letters signifying the dental degree conferred upon him or her.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 27.)

§ 34-9-24. Statement of charges and notice of hearing before revocation or suspension of license. *Current through the end of the 2010 Regular Session.*

No action to revoke or suspend a license shall be taken until the licensee has been furnished a statement in writing of the charges against him or her, together with a notice of the time and place of the hearing. The statement of charges and notice shall be served upon the licensee at least 20 days before the date fixed for hearing, either personally or by registered or certified mail sent to his or her last known post-office address.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 29; Acts 1965, 3rd Ex. Sess., No. 25, p. 232, § 1.)

§ 34-9-25. Judicial review of orders of board. *Current through the end of the 2010 Regular Session.*

From any order of the board imposing any of the penalties found in Section 34-9-18, any party affected thereby may bring an action in the circuit courts to set aside the order on the ground that same is unlawful or arbitrary.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 30; Acts 1985, No. 85-697, p. 1120, § 1.)

§ 34-9-26. Examination, qualifications, licensing, etc., of dental hygienists. *Current through the end of the 2010 Regular Session.*

No person shall practice as a dental hygienist in this state until such person has passed an examination given by the board under rules and regulations as the board may promulgate and the payment of a fee. The board shall issue licenses and license certificates as dental hygienists to those persons who have passed the examination and have been found qualified by the board. The license certificate and annual registration certificate shall be displayed in the office in which the dental hygienist is employed. No person shall be entitled to a license and license certificate unless the person is 19 years of age and of good moral character. Each applicant for examination and license as a dental hygienist shall be a graduate of a school of dental hygiene which has been approved by the board, or in lieu thereof, shall have served as a dental assistant for a period of time established by board rule and shall have served at least one year as a dental hygienist trainee under a training permit issued by the board to a qualified dentist practicing in this state in

accordance with the dental hygienist training program established by the Board of Dental Examiners of Alabama. Any person practicing in violation of this section shall be guilty of a misdemeanor, and the board may impose the penalties outlined in Section 34-9-18 for such violation.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 35; Acts 1979, No. 79-427, p. 668, § 1(e); Acts 1985, No. 85-697, p. 1120, § 1; Act 2001-269, p. 328, § 3; Act 2009-18, p. 43, § 5.)

§ 34-9-27. Employment, supervision, and practice of dental hygienists. *Current through the end of the 2010 Regular Session.*

A dental hygienist shall work only under the direct supervision of a duly licensed dentist practicing in this state. Dental hygienists may take, develop, and mount oral X-rays; remove calcareous deposits, accretions, or stains from the teeth, perform any intra-oral procedures allowed by rule or regulation of the Board of Dental Examiners of Alabama and assist a licensed dentist in his or her practice. Any person licensed by the board under this section who has completed the curriculum for dental hygienists at a dental school approved by the board shall have the right to use the title registered dental hygienist or the abbreviations thereof, "R.D.H." appended to his or her name signifying the license conferred. The board may impose any of the penalties outlined in Section 34-9-18 against any dentist who shall permit any dental hygienist working under his or her supervision to perform any operation other than those permitted under the provisions of this section, and may impose the penalties outlined in Section 34-9-18 against any dental hygienist who shall perform any operation other than those permitted under this section.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 36; Acts 1985, No. 85-697, p. 1120, § 1; Acts 1993, No. 93-159, p. 241, § 3.)

§ 34-9-28. Dental hygienist to notify board of change of address or employer; annual registration requirements. *Current through the end of the 2010 Regular Session.*

It shall be the duty of all licensed dental hygienists to notify the secretary-treasurer of the board of any change of address or employer and have issued to them an annual registration certificate by the board. Any dental hygienist whose license shall be automatically suspended by reason of failure, neglect, or refusal to secure the annual registration certificate may be reinstated by the board upon payment of the penalty fee plus the current year's registration fee. The form and method provided for in Section 34-9-15 shall apply to the annual registration of dental hygienists.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 37; Acts 1965, 3rd Ex. Sess., No. 25, p. 232, § 1; Acts 1997, No. 97-701, p. 1418, § 1; Act 2009-18, p. 43, § 5.)

§ 34-9-29. Injunctions against violations of chapter. *Current through the end of the 2010 Regular Session.*

When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in the circuit court for an injunction, and

said court of this state may enjoin any person from violating this chapter regardless of whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted. For purposes of this section, person shall be deemed to include any individual, firm, partnership, corporation, professional association, professional corporation or other entity.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 31; Acts 1985, No. 85-697, p. 1120, § 1.)

ARTICLE 2. . BOARD OF DENTAL EXAMINERS.

§ 34-9-40. Creation; composition. *Current through the end of the 2010 Regular Session.*

(a) In order to accomplish the purposes and to provide for the enforcement of this chapter, there is hereby created the Board of Dental Examiners of Alabama. The board is hereby vested with the authority to carry out the purposes and enforce the provisions of this chapter. On June 24, 1959, the members of the present board now in existence shall hold office for the remainder of their respective terms for which they have been elected and thereafter until their successors are elected and qualified and shall constitute the board under this chapter. The board shall consist of six dentists who shall be selected in the method set forth herein all of whom having been actively engaged in the practice of dentistry in the State of Alabama for at least five years next preceding the date of their election and one dental hygienist elected at-large as provided in subsection (b). Each member of the board shall be a citizen of this state. No member of the board shall be a member of the faculty of any dental school, dental college, dental hygiene school, or dental hygiene college or receive any financial benefits for teaching in any dental school, dental college, dental hygiene school, or dental hygiene college or have a financial interest in a commercial dental laboratory or a dental supply business. Beginning in October 2009, and every five years thereafter, one member, who is qualified as provided herein, shall be selected by the Alabama Dental Society no later than July 1, 2009, and every five years thereafter. As for all elections of members, any group of 10 or more licensed dentists, residing and practicing dentistry in the state, may nominate a candidate for the position of board member by submitting a petition bearing their signatures to the secretary of the board to be postmarked not later than the first day of July in the year of the election. The board shall cause the election ballots to be mailed not later than September 1 in the year of the election to all the licensed dentists residing and practicing in the state and currently registered as prescribed by law, along with the annual registration form for the forthcoming fiscal year. Both the annual registration form and fee must accompany the separately sealed ballot that shall be postmarked no later than October 1 and returned to the secretary of the board no later than the first board workday following October 1 each year, ballots being nullified unless accompanied by completed annual registration form and annual registration fee. Three members of the board shall be present at the canvassing of the ballots. Any candidate receiving a majority of the votes shall be declared elected to the board and will take the oath of office on or before October 15 in the year of his or her election. In the event no candidate receives a majority of the votes cast, the board shall conduct a run-off election between the two candidates receiving the largest number of votes. The board shall cause the ballots pertaining to the run-off election to be mailed on or before October 15 of the election year to all the licensed dentists residing and practicing in the state and currently registered as prescribed by law, and the ballots pertaining to the run-off election shall be postmarked no later than the first day of November in the year of the run-off election and

received by the secretary of the board no later than the first board workday following the first day of November. All ballots received after this date shall be nullified. In the event of a run-off election, the candidate receiving the largest number of votes in the run-off election shall be declared elected to the board and shall immediately take the oath of office and begin his or her term of office. Every member elected shall hold office for a period of five years, which terms shall begin immediately upon taking an oath to properly and faithfully discharge the duties of his or her office and until his or her successor is elected and qualified, and the member so elected shall not at the expiration of the term be eligible to succeed himself or herself. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. Except for the board member position selected by the Alabama Dental Society, vacancies on the board shall be filled by the board by the appointment of the immediate past member of the board, and if for any reason the immediate past member of the board is unable to accept the appointment, then the board shall fill the vacancy by appointment of the most recent past board member who is willing to accept the appointment. If no past board member accepts the appointment, then the board may, by unanimous vote, appoint any licensed dentist qualified under the provisions of this chapter. In the event of a vacancy in the position selected by the Alabama Dental Society, the Alabama Dental Society shall select a dentist who is qualified as provided herein to fill the vacancy. Members of the board shall be removed by a two-thirds vote of the registered dentists in the state for neglect of duty or any just cause, by petition to the secretary of the board by 10 percent of the licensed dentists in the state. On or before July 1, 1962, the board shall send a copy of this section to all licensed dentists in the state.

(b)(1) One member of the board shall be a licensed dental hygienist. The dental hygienist member shall be of good moral and ethical character and shall have been actively engaged in the practice of dental hygiene in the State of Alabama for at least five years preceding the date of election. No dental hygienist member shall be a member of the faculty of any dental school, dental college, dental hygiene school, or dental hygiene college or receive any financial benefits for teaching in any dental school, dental college, dental hygiene school, or dental hygiene college or have a financial interest in a commercial dental laboratory or dental supply business while serving on the board.

(2) The dental hygienist member shall be elected as follows:

a. Any group of 10 or more licensed dental hygienists, residing and practicing dental hygiene in the State of Alabama, may nominate a candidate for the dental hygienist position by submitting a petition bearing their signatures to the secretary of the board no later than the first day of July in the year of an election. The board shall cause election ballots to be mailed no later than September 1 in the year of an election to all the licensed dental hygienists residing and practicing in the state and currently registered as prescribed by law. Both the annual registration form and the registration fee must accompany a separately sealed ballot that shall be postmarked no later than October 1 and returned to the secretary of the board no later than the first board workday following October 1 each year, and the ballots will be nullified unless the voter has complied with Section 34-9-28, concerning annual registration.

b. Three members of the board shall be present at the canvassing of the ballots. Any candidate receiving a majority of the votes shall be the dental hygienist member and shall take the oath of office on or before October 15 in the year of his or her election. In the event no candidate receives a majority of the votes cast, the board shall conduct a run-off election between the two candidates receiving the largest number of votes. The board shall cause the ballots pertaining to any run-off election to be mailed on or before

October 15 of the election year to all licensed dental hygienists residing and practicing in the state and currently registered as prescribed by law, and the ballots pertaining to the run-off election shall be postmarked no later than November 1 in the year of the run-off election and received by the secretary of the board no later than the first board workday following November 1. Ballots received after November 1 shall be nullified. In the event of a run-off election, the dental hygienist receiving the largest number of votes in the run-off election shall be declared elected to the board and shall immediately take the oath of office and begin his or her term of office.

c. All elections as described above shall be conducted by the board.

(3) The dental hygienist member shall be removed by a two-thirds vote of the registered dental hygienists in the state for neglect of duty or any just cause by petition to the secretary of the board by 10 percent of the licensed dental hygienists in the state.

(4) The dental hygienist member shall hold that position for a period of five years, which term shall begin immediately upon taking an oath to properly and faithfully discharge the duties of his or her office and continue until his or her successor is elected and qualified, and the member so elected shall not at the expiration of the term be eligible to succeed himself or herself. If a vacancy occurs in the position of dental hygienist, the unexpired term shall be filled by the board by the appointment of the immediate past dental hygienist member. If for any reason the immediate past dental hygienist member is unable to accept the appointment, then the board shall fill the vacancy by a unanimous vote of the other board members by the appointment of some other past dental hygienist member. If a vacancy occurs and there is not an immediate past dental hygienist member or other past dental hygienist member, the vacancy shall be filled by a unanimous vote of the board by the appointment of some otherwise qualified dental hygienist.

(5) The dental hygienist member shall advise the board on matters relating to dental hygiene and shall only be permitted to vote on matters relating to dental hygiene. The board shall provide the dental hygienist member with timely notice of all board meetings and the dental hygienist member shall be allowed to attend all meetings unless prohibited by law from attendance at any disciplinary hearings. The board shall not adopt any rule relating to the practice of dental hygiene unless the proposed rule has been submitted to the dental hygienist member for review and comment at least 30 days prior to its adoption. The dental hygienist member shall be entitled to the same compensation and expenses paid to dentist members of the board pursuant to Section 34-9-41.

(c) Any dentist or dental hygienist who has been found guilty of violating this chapter or any provision of a dental practice act of any other state and as a result his or her license was revoked, suspended, or placed on probation or who has been convicted of a felony, shall not be eligible for election or membership on the board for a period of five years from the termination of any such revocation, suspension, or probation.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 2; Acts 1961, Ex. Sess., No. 58, p. 1923, § 1; Acts 1993, No. 93-159, p. 241, § 3; Acts 1997, No. 97-155, p. 202, § 3; Act 99-402, p. 669, § 1; Act 2009-18, p. 43, § 5.)

§ 34-9-41. Officers of board; seal; meetings; compensation; disposition of funds. *Current through the end of the 2010 Regular Session.*

The board shall annually elect from its membership a president, vice-president, and

secretary-treasurer and may employ a secretary who is not a member of the board, and it shall not be necessary that the secretary be a dentist. The board shall have a common seal. The board shall hold an annual meeting in Birmingham at the University of Alabama School of Dentistry as soon as practical after the graduation exercises of the dental school for the purpose of examining applicants for a license to practice dentistry and dental hygiene or at such other times and places as the board may designate for the purpose of transacting its business and examinations. A majority of the board shall constitute a quorum for the transaction of business at any meeting except that in conducting hearings involving any of the penalties outlined in Section 34-9-18, no less than five members of the board shall be present. In conducting hearings involving any of the penalties outlined in Section 34-9-18, a majority of the board may appoint any former member of the board who for such purposes shall have all the powers and privileges of such office as a regular board member possesses. In conducting exams, a majority of the board may appoint any former member of the board or such other licensed practicing dentists from a jurisdiction recognized by the board who for such purposes shall have all the powers and privileges of such office as a regular board member possesses. Out of the funds of the board the members thereof shall receive as compensation a sum to be fixed by the board for each day actively engaged in the duties of their office, and in addition board members shall receive the same per diem and travel allowance as is paid by law to state employees for each day actively engaged in the duties of their office. The secretary-treasurer shall receive such compensation as may be fixed by the board, which shall be in addition to his or her per diem and expenses, provided no per diem or expenses shall be allowed unless his or her duties require his or her absence from his or her office. The secretary shall receive such compensation as may be fixed by the board. The secretary-treasurer shall be custodian of all property, money, records and the official seal of the board. All money received by the board under this chapter shall be paid to and received by the secretary-treasurer of the board. The secretary-treasurer shall deposit to the credit of the board all funds paid to the board in a bank selected by its members. The board is authorized to expend such funds as shall be necessary to enforce the provisions of this chapter; to pay salaries, expenses and other costs herein provided; to promote the arts and science of dentistry; and for such other purposes as the board shall consider to be in the best interest of dentistry in this state. All the costs herein provided for shall be paid by checks drawn by the secretary-treasurer and countersigned by the president of the board; except the board may authorize the administrative secretary to sign checks for costs that do not exceed a monetary limit to be set by the board in its rules. Should the property be other than money, the secretary-treasurer shall provide for the safekeeping thereof for the use of the board. All money, including license fees, annual renewal license certificate fees, examination fees and any and all other fees and receipts under the provisions of this chapter, are hereby appropriated to the Board of Dental Examiners to be used as herein provided.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 3; Acts 1961, Ex. Sess., No. 58, p. 1923, § 1; Acts 1979, No. 79-427, p. 668, § 1(f); Acts 1985, No. 85-697, p. 1120, § 1; Acts 1989, No. 89-407, p. 868, § 3; Act 2009-18, p. 43, § 5; Act 2010-262, § 1.)

§ 34-9-42. Bond of secretary-treasurer of board; annual report and audit; national affiliation. *Current through the end of the 2010 Regular Session.*

The secretary-treasurer of the board shall give bond in such sum as may be prescribed by the board, conditioned to faithfully and honestly discharge the duties of the office according to law,

which bond shall be made payable to the Board of Dental Examiners of Alabama and held in the custody of the president of the board. The secretary-treasurer of the board shall compile an annual report which shall contain an itemized statement of all money received and disbursed and a summary of the official acts of the board during the preceding year, and the report shall have attached thereto a certified report and audit made by a certified public accountant of the State of Alabama. A copy of the report and audit shall be filed of record in the office of the Department of Finance of the State of Alabama, and a copy shall be retained by the secretary-treasurer to be rendered upon request, to the dentists at large in the State of Alabama. The board may affiliate with the American Association of Dental Boards, may pay dues to the the association, and may send all members of the board to the meetings of the association. Such delegates may receive the per diem herein provided for attending such meetings and reimbursement for necessary expenses audited and allowed by the board.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 4; Acts 1961, Ex. Sess., No. 58, p. 1923, § 1; Acts 1981, No. 81-372, p. 540, § 6; Act 2010-262, § 1.)

§ 34-9-43. Powers and duties generally. *Current through the end of the 2010 Regular Session.*

The board shall exercise, subject to this chapter, the following powers and duties:

- (1) Adopt rules for its government as deemed necessary and proper.
- (2) Prescribe rules for qualification and licensing of dentists and dental hygienists.
- (3) Conduct examinations to ascertain the qualification and fitness of applicants for licenses as dentists and dental hygienists.
- (4) Make rules and regulations regarding sanitation.
- (5) Formulate rules and regulations by which dental schools and colleges are approved, and formulate rules and regulations by which training, educational, technical, vocational, or any other institution which provides instruction for dental assistants, dental laboratory technicians, or any other paradental are approved.
- (6) Grant licenses, issue license certificates, teaching permits, and annual registration certificates in conformity with this chapter to such qualified dentists and dental hygienists.
- (7) Conduct hearings or proceedings to impose the penalties specified in Section 34-9-18.
- (8)a. Employ necessary persons to assist in performing its duties in the administration and enforcement of this chapter, and to provide offices, furniture, fixtures, supplies, printing, or secretarial service to these persons and expend necessary funds.
 - b. Employ an attorney or attorneys, subject to the approval of the Attorney General, to advise and assist in the carrying out and enforcing of the provisions of this chapter. Provided, however, if the board contracts with an outside attorney to be general counsel to the board, that attorney or any member of a law firm with which he or she is associated shall not function as the board's prosecutor at disciplinary hearings.
- (9)a. Investigate alleged violations of this chapter and institute or have instituted before the board or the proper court appropriate proceedings regarding the violation.
 - b. Authorize and employ investigators who comply with the Peace Officers' Minimum Standards and Training Act to exercise the powers of a peace officer in investigating alleged violations of the drug or controlled substances laws by persons licensed pursuant to this chapter, including the powers of arrest and inspection of documents. These investigators shall not be paid a subsistence allowance by the board.
- (10) Adopt rules and regulations to implement this chapter.

(11) Publish, on a quarterly basis, all minutes, except minutes of executive sessions, financial reports, schedules of meetings, including anticipated executive sessions, and other pertinent information on the board's website no later than 90 days following the date of occurrence. In addition, publish annually the rules and regulations promulgated by the board, a copy of the Dental Practice Act, and a list of all persons licensed to practice under this chapter.

(12) Attend meetings, seminars, work shops, or events that may improve the function and efficiency of the board or improve the ability of the board to enforce and administer this chapter.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 5; Acts 1981, No. 81-372, p. 540, § 7; Acts 1985, No. 85-697, p. 1120, § 1; Acts 1987, No. 87-578, p. 923, § 1; Acts 1993, No. 93-159, p. 241, § 3; Act 2009-18, p. 43, § 5.)

§ 34-9-43.1. Administration and enforcement of duties; consultants. *Current through the end of the 2010 Regular Session.*

(a) The board may employ investigators, attorneys, agents, and any other employees and assistants to aid in the administration and enforcement of the duties of the board. The board may request assistance from the Attorney General, district attorneys, or other prosecuting attorneys of this state in the various circuits and counties. All prosecuting attorneys throughout the state shall assist the board, upon request of either, in any action for injunction or any prosecution without charge or additional compensation.

(b) The board may employ consultants to render professional services such as, but not limited to, reviewing records and providing expert testimony in contested cases to aid the board in carrying out its lawful responsibilities. Consultants shall be compensated for professional services at rates established by the board by rule. In addition, consultants shall be reimbursed for actual reasonable expenses for travel, lodging, meals, long distance telephone expense, and other expenses reasonably incurred in the performance of the consultant's professional services.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 11.)

§ 34-9-44. Records to be kept by secretary-treasurer; copies and certificates as evidence.

Current through the end of the 2010 Regular Session.

The secretary-treasurer of the board shall keep a registry in which shall be entered the names of all persons to whom license certificates have been granted under this chapter, the numbers of such license certificates, the dates of granting the same and other matters of records, and he or she shall keep a true and correct copy of the minutes of all board meetings, and the book so provided and kept shall be the official book of records. A photostatic copy of the records or a copy of the records certified by the secretary-treasurer and under the seal of the board shall be admitted in any of the courts of this state as prima facie evidence of the facts contained in the records and in lieu of the original thereof. A certificate under the hand of the secretary-treasurer and the seal of the board that there is not entered in such record books the name and number of and date of granting such license certificate to a person charged with a violation of any of the provisions of this chapter shall be prima facie evidence of the facts contained therein. Such

certificates shall be admitted in any of the courts of this state in lieu of the records of the board. The original books, records and papers of the board shall be kept at the office of the secretary-treasurer of the board, which office shall be at such place as may be designated by the board.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 6; Acts 1965, 3rd Ex. Sess., No. 25, p. 232, § 1.)

§ 34-9-45. Board to assist prosecuting officers. *Current through the end of the 2010 Regular Session.*

The board and its members and officers shall assist prosecuting officers in the enforcement of this chapter, and it shall be the duty of the board, its members and officers to furnish the proper prosecuting officers with such evidence as it or they may ascertain to assist them in the prosecution of any violation of this chapter, and the board is authorized for such purposes to make such reasonable expenditures from the funds of the board as it may deem necessary to ascertain and furnish such evidence.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 28.)

§ 34-9-46. Subpoenas and testimony. *Current through the end of the 2010 Regular Session.*

In all matters pending before it, the board shall have the power to issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, and records, documentary evidence and materials or other evidence. Any person failing or refusing to appear or testify regarding any matter about which he or she may be lawfully questioned or to produce any papers, books, records, documentary evidence, or materials or other evidence in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so, may, upon application by the board to any circuit judge of the State of Alabama, be ordered to comply therewith; and, upon failure to comply with the order of the circuit judge, the court may compel obedience by attachment as for contempt as in case of disobedience of a similar order or subpoena issued by the court. The president and secretary-treasurer of the board shall have authority to issue subpoenas, and any board member shall have authority to administer oaths to witnesses, or to take their affirmation. A subpoena or other process of paper may be served upon any person named therein, anywhere within the State of Alabama with the same fees and mileage by any officer authorized to serve subpoenas or such other process or paper in civil actions, in the same manner as is prescribed by law for subpoenas issued out of the circuit courts of this state, the fees and mileage and other costs to be paid as the board directs.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 32.)

§ 34-9-47. Taking of depositions. *Current through the end of the 2010 Regular Session.*

Depositions may be taken within or without the State of Alabama in the manner provided for by the laws of Alabama and the Alabama Rules of Civil Procedure for the taking of depositions in matters pending in the circuit courts of this state. The depositions shall be returnable to the clerk of the circuit court of the county wherein the hearing before the board is pending, and the clerk shall deliver the depositions to the board upon request, and the depositions may be opened or used by the parties to the proceedings the same as is provided for in matters pending before

the circuit courts. The circuit court shall, upon request of any interested party in any proceedings before the state board, issue commissions for the taking of depositions in the same manner as is provided for the issuance of commissions for the taking of depositions in matters pending before the circuit courts of this state.

CREDIT(S)

(Acts 1959, No. 100, p. 569, § 33.)

ARTICLE 3. . USE OF ANESTHESIA BY DENTISTS.

§ 34-9-60. Use of local anesthesia; permit to use general anesthesia. *Current through the end of the 2010 Regular Session.*

Any person licensed to practice dentistry in the State of Alabama shall be authorized to use anesthesia in accordance with the provisions of this section.

(1) All dentists are authorized to use local anesthesia.

(2) Twelve months after May 29, 1985, no dentist shall use general anesthesia on an outpatient basis for dental patients, unless such dentist possesses a permit of authorization issued by the Board of Dental Examiners.

a. In order to receive such permit, the dentist must apply on a prescribed application form to the Board of Dental Examiners, submit an application fee, and produce evidence showing that he or she:

1. Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program as described in Part II of the guidelines for teaching the comprehensive control of pain and anxiety in dentistry; or

2. Is a diplomate of the American Board of Oral and Maxillofacial Surgery, or is eligible for examination by the American Board of Oral and Maxillofacial Surgery, or is a member of the American Association of Oral and Maxillofacial Surgeons; or

3. Employs or works in conjunction with a qualified medical doctor who is a member of the anesthesiology staff in an accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility until any patient given a general anesthetic regains consciousness and is discharged; and

4. Has a properly equipped facility for the administration of general anesthesia staffed with a supervised team of auxiliary personnel capable of reasonably assisting the dentist with procedures, problems, and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team shall be determined by the Board of Dental Examiners as outlined below.

b. Prior to the issuance of such permit, the Board of Dental Examiners, at its discretion, may require an on-site inspection of the facility, equipment and personnel to determine if, in fact, the aforementioned requirements have been met. This evaluation shall be carried out in a manner prescribed by the board. The evaluation shall be conducted by a team of three examiners appointed by the Board of Dental Examiners. These examiners shall be dentists who are authorized to administer general anesthesia.

If the results of the initial evaluation are deemed unsatisfactory, upon written request of the applicant, a second evaluation shall be conducted by a different team of examiners.

(3) Each dentist who is licensed to practice dentistry in the state on May 29, 1985, who desires to continue to use general anesthesia shall make application on the prescribed form to

the Board of Dental Examiners within 12 months of May 29, 1985. If he or she meets the requirements of this section, he or she shall be issued such a permit. If the applicant does not meet the requirements of paragraph a. of subdivision (2) of this section, he or she may be entitled to a "general anesthesia permit" provided said applicant passes to the satisfaction of the board an on-site inspection as provided for in paragraph b. of subdivision (2) of this section.

(4) Each dentist who has not been using general anesthesia prior to May 29, 1985, may be granted by the board a temporary provisional permit based on the applicant's producing evidence that he or she has complied with paragraph a. of subdivision (2) of this section above pending complete processing of the application and thorough investigation of an on-site evaluation as described in paragraph b. of subdivision (2) of this section.

CREDIT(S)

(Acts 1985, No. 85-697, p. 1120, § 2, Acts 1988, 1st Ex. Sess. No. 88-854, p. 327, § 1; Act 2009-18, p. 43, § 5.)

§ 34-9-61. Review and renewal of permit; reevaluation of credentials and facility. *Current through the end of the 2010 Regular Session.*

(a) Any dentist holding a permit of authorization issued by the Board of Dental Examiners shall be subject to review and such permit must be renewed annually.

(b) The board shall, upon payment of a renewal fee, renew the general anesthesia permit annually unless the holder is informed in writing that a reevaluation of his or her credentials and facility is to be required. In determining whether such reevaluation is necessary, the board shall consider such factors as it deems pertinent including, but not limited to, patient complaints and reports of adverse occurrences. Such reevaluation shall be carried out in the manner described in paragraph b. of subdivision (2) of Section 34-9-60.

CREDIT(S)

(Acts 1985, No. 85-697, p. 1120, § 3; Acts 1988, 1st Ex. Sess., No. 88-854, p. 327, § 1; Act 2009-18, p. 43, § 5.)

§ 34-9-62. Certification in cardiopulmonary resuscitation. *Current through the end of the 2010 Regular Session.*

Any dentist using general anesthesia, and his or her auxiliary personnel shall be currently certified in cardiopulmonary resuscitation.

CREDIT(S)

(Acts 1985, No. 85-697, p. 1120, § 4.)

§ 34-9-63. Permit to use parenteral sedation. *Current through the end of the 2010 Regular Session.*

The issuance of a permit for general anesthesia shall include the privilege of administering parenteral sedation in accordance with this section. The issuance of a permit for parenteral sedation shall include the privilege of administering intravenous sedation. All current intravenous sedation permit holders are entitled to a parenteral sedation permit subject to the renewal and regulatory provisions afforded to the Board of Dental Examiners by this chapter.

The term parenteral sedation shall not include the use or regulation of nitrous oxide.

(1) After August 1, 1993, no dentist shall use parenteral sedation on an outpatient basis for dental patients unless the dentist possesses a permit of authorization issued by the board. The dentist applying for or holding the permit shall be subject to on-site inspections as provided in paragraph b. of subdivision (2) of Section 34-9-60.

a. In order to receive the permit, the dentist shall:

1. Apply on a prescribed application form to the board.

2. Submit a fee.

3. Produce evidence showing that he or she has satisfied each of the following requirements:

(i) Received formal training in the use of parenteral sedation from a board approved training program, is competent to handle all emergencies relating to parenteral sedation, and is currently certified in cardiopulmonary resuscitation. The certification of the formal training shall specify the total number of hours, the number of didactic hours, and the number of patient contact hours. The required number of didactic hours and patient contact hours shall be determined by the board.

(ii) Equipped a proper facility for the administration of parenteral sedation, staffed with a supervised team of auxiliary personnel capable of reasonably assisting the dentist with procedures, problems, and emergencies incident to the sedation procedure.

b. Adequacy of the facility and the competency of the sedation team shall be determined by the board.

c. Prior to the issuance of a permit, the board may require an on-site inspection of the facility, equipment, and personnel to determine if the requirements of this section have been met. This evaluation shall be performed as provided in subdivision (2) of this section.

(2) Each dentist who is licensed to practice dentistry in the state on or after August 1, 1993, who desires to continue to use parenteral sedation shall make application on the prescribed form to the board within 12 months of August 1, 1993. If he or she meets the requirements of this section, or currently holds a valid intravenous sedation permit, he or she shall be issued such a permit subject to all renewal and regulatory requirements of Section 34-9-64. If the applicant does not meet the requirements of paragraph a. of subdivision (1) of this section, or does not currently hold a valid intravenous sedation permit, he or she may be entitled to a "parenteral sedation permit" if the applicant passes, to the satisfaction of the board, an on-site inspection. The inspection shall ascertain that the dentist has a properly equipped facility for the administration of parenteral sedation, staffed with a supervised team of auxiliary personnel capable of reasonably assisting the dentist with incidental procedures, problems, and emergencies.

The board, in conducting the on-site inspection and evaluations required in this section, shall appoint a team of three examiners who shall be dentists certified to administer parenteral sedation in accordance with this article.

(3) A dentist utilizing parenteral sedation and the auxiliary personnel of the dentist shall be currently certified in cardiopulmonary resuscitation.

(4) Each dentist who has not been using parenteral sedation prior to August 1, 1993, may, pending complete processing of an application and a thorough on-site evaluation, be granted a temporary provisional permit by the board, if the applicant produces evidence that he or she

has complied with this section.

CREDIT(S)

(Acts 1985, No. 85-697, p. 1120, § 5; Acts 1988, 1st Ex. Sess., No. 88-854, p. 327, § 1; Acts 1989, No. 89-407, p. 868, § 3; Acts 1993, No. 93-159, p. 241, § 3; Act 2009-18, p. 43, § 5.)

§ 34-9-64. Annual renewal of parenteral sedation permit; reevaluation of credentials and facility. *Current through the end of the 2010 Regular Session.*

The board shall renew the parenteral sedation permit annually, upon payment of a renewal fee, unless the holder is informed in writing that a reevaluation of his or her credentials and facility is necessary. In determining whether the reevaluation is necessary, the board shall consider any factors as it deems pertinent including, but not limited to, patient complaints and reports of adverse occurrences. The reevaluation shall be performed as provided in paragraph b. of subdivision (2) of Section 34-9-60.

CREDIT(S)

(Acts 1985, No. 85-697, p. 1120, § 6; Acts 1988, 1st Ex. Sess., No. 88-854, p. 327, § 1; Acts 1989, No. 89-407, p. 868, § 3; Acts 1993, No. 93-159, p. 241, § 3; Act 2009-18, p. 43, § 5.)

§ 34-9-65. Reports of mortalities and other incidents resulting from general anesthesia or sedation. *Current through the end of the 2010 Regular Session.*

(a) All licensees engaged in the practice of dentistry in the state must submit a complete report within a period of 30 days to the Board of Dental Examiners of any mortality or other incident occurring in the outpatient facilities of such dentist which results in permanent physical or mental injury of the patient as a direct result of general anesthesia or sedation techniques.

(b) The Board of Dental Examiners shall have authority to adopt rules and regulations implementing and enforcing the provisions of this section.

(c) Violation of any provision of this section shall subject the dentist to the penalties outlined in Section 34-9-18 and no order imposing those penalties shall be made or entered except after notice and hearing by the board as provided in Chapter 9, Title 34. Such order shall be subject to judicial review as provided by such chapter.

CREDIT(S)

(Acts 1985, No. 85-697, p. 1120, § 7.)

ARTICLE 4. . ORAL CONSCIOUS SEDATION.

§ 34-9-80. Definitions. *Current through the end of the 2010 Regular Session.*

As used in this article, the following terms shall have the following meanings:

(1) Analgesia. The diminution or elimination of pain in the conscious patient.

(2) Anxiolysis. A pharmacological induced state, oral or inhalation, where a patient experiences a diminution of anxiety.

(3) Board. The Alabama Board of Dental Examiners.

(4) Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sub lingual).

(5) Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the pulmonary tree and the primary effect is due to absorption through the

pulmonary bed.

(6) Localized anesthesia. The elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

(7) Oral conscious sedation. A depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and to respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. Oral conscious sedation does not include the administration of a medication given only for the purpose of diminution of anxiety. An oral conscious sedation permit is not required for the use of inhalation nitrous oxide following the administration of a medication given only for the purpose of diminution of anxiety.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 1.)

§ 34-9-81. Permits required. *Current through the end of the 2010 Regular Session.*

In order to administer oral conscious sedation, a dentist must possess a general anesthesia permit, a parenteral sedation permit, or an oral conscious sedation permit from the board. In order to receive an oral conscious sedation permit, the dentist must apply on a prescribed application form to the board and submit an application fee. The dentist applying for the permit must show evidence that he or she has done at least one of the following:

(1) Has completed an American Dental Association accredited postgraduate general dentistry or specialty residency program which included specific training in oral conscious sedation.

(2) Has completed a minimum of 16 hours' training in oral conscious sedation in a course approved by the board.

(3) Has certification of training in oral conscious sedation by any entity or organization approved by the board.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 2; Act 2009-18, p. 43, § 5.)

§ 34-9-82. Requirements for treatment. *Current through the end of the 2010 Regular Session.*

(a) A dentist using oral conscious sedation must comply with all of the following requirements:

(1) Patients to be treated under oral conscious sedation must be suitably evaluated prior to the start of any sedation procedure. Using the American Society of Anesthesiologists Patient Physical Status classifications the dentist should determine that the patient is an appropriate candidate for oral conscious sedation.

(2) The patient or guardian must be advised regarding the procedure associated with the delivery of any sedative agents and the appropriate informed consent should be obtained.

(3) Inhalation equipment used in conjunction with oral conscious sedation must be evaluated prior to use on each patient. Determination of adequate oxygen supply must be completed prior to use with each patient.

(4) Appropriate verbal or written preoperative and postoperative instructions must be given to the patient or guardian.

(5) Baseline vital signs should be obtained unless the patient's behavior prohibits such

determination.

(6) Pretreatment physical evaluation should be performed as deemed appropriate.

(7) All medications and dosages used during an oral conscious sedation procedure must be recorded in the patient's record of treatment.

(8) An emergency cart or kit must be readily accessible and must be available for immediate use during any sedation procedure.

(9) The only classification of drugs for sedation to be administered enterally by a responsible adult procedurally outside the treatment facility is minor tranquilizers. Minor tranquilizers (i.e., hydroxyzine or diazepam) do not include chloral hydrate or narcotics.

(10) Direct clinical observation and monitoring of the patient by a staff member must be continuous during the recovery period. The dentist shall assess the patient's responsiveness and must determine that the patient has met discharge criteria prior to leaving the office and the patient must be discharged into the care of a responsible person.

(b) It shall be incumbent upon the operating dentist to insure that the patient is appropriately monitored. A sedated patient must be continuously kept under direct clinical observation by a trained individual. The sedated patient's oxygen saturation must be monitored by pulse oximetry. Chest excursions must be observed and the color of mucosa and skin continually evaluated. Back-up emergency services should be identified and a protocol outlining necessary procedures for their immediate employment should be developed and operational for each facility.

(c) Any dentist utilizing oral conscious sedation procedures must have a properly equipped facility staffed with a supervised team of allied dental personnel who will be appropriately trained and capable of reasonably assisting the dentist with procedures, problems, and emergencies incident thereto. When inhalation equipment is used, in combination with orally administered sedatives, it must have a fail safe system that is appropriately checked and calibrated. The inhalation equipment must have the capacity for delivering 100 percent oxygen, and never less than 25 percent oxygen. A system for delivering oxygen must be available and must have adequate full-face mask and appropriate connectors, and be capable of delivering oxygen under positive pressure to the patient. Inhalation equipment must have a scavenging system. Suction equipment must be available that allows aspiration of the oral and pharyngeal cavities. A stethoscope and a sphygmomanometer with cuffs of appropriate size shall be immediately available.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 3.)

§ 34-9-83. Requirements for assistants. *Current through the end of the 2010 Regular Session.*

Allied dental personnel who assist dentists during oral conscious sedation procedures must be currently certified in cardiopulmonary resuscitation. During a sedation procedure, at least one additional person must be present in addition to the dentist. This may be a chair side dental assistant.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 4.)

§ 34-9-84. Report of adverse consequences. *Current through the end of the 2010 Regular Session.*

Any adverse consequence occurring with oral conscious sedation shall be reported to the

board as required with general anesthesia and parenteral sedation.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 5.)

§ 34-9-85. Limits on advertisements. *Current through the end of the 2010 Regular Session.*

The availability of oral conscious sedation, if advertised, shall be done without reference to sleep, snooze, or any other expression indicating a total or partial loss of consciousness.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 6.)

§ 34-9-86. On-site inspection. *Current through the end of the 2010 Regular Session.*

The board, prior to issuance of a permit for oral conscious sedation, may require an on-site inspection of the personnel, the facility, and the equipment to determine if the requirements of this article have been met. The inspection team shall be determined by the board and shall reflect the principles of peer review.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 7.)

§ 34-9-87. Permit limitations. *Current through the end of the 2010 Regular Session.*

A dentist who holds only an oral conscious sedation permit may not use or administer general anesthesia or parenteral sedation, or both, as those terms are used in this chapter.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 8.)

§ 34-9-88. Renewal of permit. *Current through the end of the 2010 Regular Session.*

This permit must be renewed annually upon payment of a renewal fee.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 9; Act 2009-18, p. 43, § 5.)

§ 34-9-89. Treatment of patients under 12 years of age. *Current through the end of the 2010 Regular Session.*

When oral conscious sedation is used on any patient under 12 years of age, the following provisions shall apply:

(1) The drugs, dosages, and techniques used should carry a margin of safety which is unlikely to render the patient noninteractive and nonarousable.

(2) In offices where pediatric patients are treated, appropriately sized emergency equipment must be available.

CREDIT(S)

(Act 2005-298, 1st Sp. Sess., p. 563, § 10.)

§ 34-9-90. Violations and penalties. *Current through the end of the 2010 Regular Session.*

Violation of any provision of this article shall subject the dentist to the penalties in Section 34-9-18, and no order imposing those penalties shall be made or entered except after notice and

hearing by the board as provided by that section. Such order shall be subject to judicial review.
CREDIT(S)
(Act 2005-298, 1st Sp. Sess., p. 563, § 12.)

TITLE 34

CHAPTER 38. IMPAIRED PROFESSIONALS' COMMITTEE.

§ 34-38-1. Definitions. *Current through the end of the 2010 Regular Session.*

For the purposes of this chapter, the following terms shall have the meaning respectively ascribed to them by this section, unless the context clearly provides for another:

(1) Dentist. Any person who is a dentist or dental practitioner pursuant to the definition of Section 6-5-481, as amended.

(2) Pharmacist. Any person who is a pharmacist as defined in Section 34-23-1, as amended, and pharmacy externs and interns registered by the Board of Pharmacy under Rule 680-X-2-.16 of the Alabama Administrative Code.

(3) Boards. Individually and/or jointly: The Board of Dental Examiners and the Board of Pharmacy.

(4) Committee. The Alabama Impaired Professionals' Committee.

(5) Hygienist. Any person who is a hygienist pursuant to the provisions of Sections 34-9-26 and 34-9-27.

CREDIT(S)

(Acts 1988, No. 88-334, p. 505, § 1; Acts 1989, No. 89-860, p. 1713, § 1.)

§ 34-38-2. Duty of Board of Dental Examiners and Board of Pharmacy to promote early treatment, etc., of individuals impaired by illness, inebriation, etc.; Alabama Impaired Professionals' Committee; expenses; competitive bidding not required. *Current through the end of the 2010 Regular Session.*

It shall be the duty and obligation of the State Board of Dental Examiners and the State Board of Pharmacy to promote the early identification, intervention, treatment, and rehabilitation of individuals within the respective jurisdiction, licensed to practice in the State of Alabama, who may be impaired by reason of illness, inebriation, excessive use of drugs, narcotics, controlled substances, alcohol, chemicals, or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession. For the purposes of this chapter, the term "impaired" shall mean the inability of a dentist, hygienist, or pharmacist to practice with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, controlled substances, alcohol, chemicals, or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession. In order to carry out this obligation, each board, individually or jointly, is hereby empowered to contract with any nonprofit corporation, health provider, or professional association for the purpose of creating, supporting, and maintaining a committee of professionals to be designated the Alabama Impaired Professionals' Committee. The committee shall consist of not less than three nor more than 15 professionals licensed to practice dentistry or pharmacy in the State of Alabama, and

selected in a manner prescribed by the board or boards. The authority of the Alabama Impaired Professionals' Committee shall not supersede the authority of the board or boards to take disciplinary action against individuals subject to this chapter. Nothing in this chapter shall limit the power and authority of the board or boards to discipline an impaired individual subject to its jurisdiction; provided that where an individual is impaired and currently in need of intervention, treatment, or rehabilitation and such individual is currently participating in programs or rehabilitation recommended by the committee, then in its discretion, the board or boards may refrain from taking or continuing disciplinary action against such individual; and further provided that where the board or boards, upon reasonable cause to believe an individual subject to its jurisdiction is impaired, has referred such individual to the committee for evaluation, then in its discretion, the board or boards may refrain from taking or continuing disciplinary action against such individual. The board, or boards, is authorized to expend such funds as are available to it as deemed necessary to adequately provide for the operational expenses of the Alabama Impaired Professionals' Committee, including, but not limited to, the actual cost of travel, office overhead and personnel expense, and compensation for the members of the committee and its staff; provided that operational expenses of the Alabama Impaired Professionals' Committee shall not include the cost of treatment or rehabilitation programs recommended by the committee to individuals subject to this chapter. The funds provided by the board or boards, under this section for the purposes stated herein shall not be subject to any provision of law requiring competitive bidding.

CREDIT(S)

(Acts 1988, No. 88-334, p. 505, § 2; Acts 1989, No. 89-860, p. 1713, § 2.)

§ 34-38-3. Authority of board or boards to contract for Impaired Professionals' Committee to undertake certain functions. *Current through the end of the 2010 Regular Session.*

The board or boards shall have the authority to enter into an agreement with a nonprofit corporation, health provider, or professional association for the Alabama Impaired Professionals' Committee to undertake those functions and responsibilities specified in the agreement. Such functions and responsibilities may include any or all of the following:

- (1) Contracting with providers of treatment programs;
- (2) Receiving and evaluating reports of suspected impairment from any source;
- (3) Intervening in cases of verified impairment;
- (4) Referring impaired professional to treatment programs;
- (5) Monitoring the treatment and rehabilitation of impaired professional;
- (6) Providing post-treatment monitoring and support of rehabilitated impaired professional; and
- (7) Performing such other activities as agreed upon by the respective board or boards and the Alabama Impaired Professionals' Committee.

CREDIT(S)

(Acts 1988, No. 88-334, p. 505, § 2.)

§ 34-38-4. Procedures for reporting impaired professional program activity and disclosure and joint review of information. *Current through the end of the 2010 Regular Session.*

The Alabama Impaired Professionals' Committee shall develop procedures in consultation

with such board or boards for:

(1) Periodic reporting of statistical information regarding impaired professional program activity;

(2) Periodic disclosure and joint review of such information as the board or boards may deem appropriate regarding reports received, contracts or investigations made, and the disposition of each report, provided, however, that the committee shall not disclose any personally identifiable information except as provided in Section 34-38-7.

CREDIT(S)

(Acts 1988, No. 88-334, p. 505, § 2.)

§ 34-38-5. Nonliability of Impaired Professionals' Committee personnel, etc., for actions within scope of function. *Current through the end of the 2010 Regular Session.*

Any dentist licensed to practice in the State of Alabama, or pharmacist, who shall be duly appointed to serve as a member of the Alabama Impaired Professionals' Committee and any auxiliary personnel, consultants, attorneys, or other employees of the committee shall not be liable to any person for any claim for damages as a result of any decision, opinion, investigation, or action taken by the committee or any individual member of the committee made by him or her within the scope of his or her function as a member of the committee if such decision, opinion, investigation, or action was taken without malice and on a reasonable belief that such action or recommendation was warranted by the facts that were then available. No nonprofit corporation, professional association, health provider, or state or county association that contracts with, or receives funds from, board or boards for the creation, support, and operation of the Alabama Impaired Professionals' Committee shall be liable to any person for any claim for damages for any action taken or recommendation made by the Alabama Impaired Professionals' Committee, or any member thereof, or any auxiliary personnel, consultant, attorney, or employee of such committee.

CREDIT(S)

(Acts 1988, No. 88-334, p. 505, § 2.)

§ 34-38-6. Confidentiality of information, records, and proceedings. *Current through the end of the 2010 Regular Session.*

All information, interviews, reports, statements, memorandums, or other documents furnished to or produced by the Alabama Impaired Professionals' Committee and any findings, conclusions, recommendations, or reports resulting from the investigations, interventions, treatment, or rehabilitation, or other related proceedings of such committee are declared to be privileged and confidential. All records and proceedings of such committee shall be confidential and shall be used by such committee, the members thereof, and the boards, only in the exercise of the proper functions of the committee and the boards, and shall not be public records nor available for court subpoena or for discovery proceedings. Nothing contained herein shall apply to records made in the regular course of business of an individual; documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the Alabama Impaired Professionals' Committee.

CREDIT(S)

(Acts 1988, No. 88-334, p. 505, § 2; Acts 1989, No. 89-860, p. 1713, § 3.)

§ 34-38-7. Annual report. *Current through the end of the 2010 Regular Session.*

It shall be the duty of the Alabama Impaired Professionals' Committee to render an annual report to each board or boards, concerning the operations and proceedings of the committee for the preceding year. In addition, the committee shall promptly report to the respective boards any individual within their jurisdiction who, in the opinion of the committee is unable to practice the standards of his or her profession with reasonable skill and safety to patients, by reason of illness, inebriation, excessive use of drugs, controlled substances, narcotics, alcohol, chemicals, or other dependency forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession and appears that such individual is currently in need of intervention, treatment, or rehabilitation. A report to the Alabama Impaired Professionals' Committee shall be deemed to be a report to the board or boards for the purposes of any mandated reporting of professional impairment otherwise provided for by the statutes of this state.

CREDIT(S)

(Acts 1988, No. 88-334, p. 505, § 2; Acts 1989, No. 89-860, p. 1713, § 4.)

§ 34-38-8. Evaluation of professional who is believed to be impaired; report of findings.

Current through the end of the 2010 Regular Session.

If the board or boards has reasonable cause to believe that a professional is impaired, such board may cause an evaluation of such professional to be conducted by the Alabama Impaired Professionals' Committee, for the purpose of determining if there is an impairment. The Alabama Impaired Professionals' Committee shall report the findings of its evaluation to the respective board or boards.

CREDIT(S)

(Acts 1988, No. 88-334, p. 505, § 2.)

TITLE 20. FOOD, DRUGS, AND COSMETICS.

CHAPTER 2. CONTROLLED SUBSTANCES.

ARTICLE 3. . REGULATION OF MANUFACTURE AND DISTRIBUTION.

§ 20-2-50. Certifying boards to promulgate rules and charge reasonable fees for registration and administration of provisions relating to manufacture, etc., of controlled substances; disposition of fees collected. *Current through the end of the 2010 Regular Session.*

(a) The certifying boards shall promulgate rules and charge reasonable fees to defray expenses incurred in registration and administration of the provisions of this article in regard to the manufacture, dispensing or distribution of controlled substances within the state.

(b) The fees collected to defray expenses shall be retained by the certifying boards.

CREDIT(S)

(Acts 1971, No. 1407, p. 2378, § 301; Acts 1976, No. 699, p. 965, § 2.)

§ 20-2-51. Registration of persons manufacturing, distributing, or dispensing controlled substances--General requirements. *Current through the end of the 2010 Regular Session.*

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state must obtain annually a registration issued by the certifying boards in accordance with its rules.

(b) Persons registered by the certifying boards under this chapter to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The certifying boards may inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by them.

CREDIT(S)

(Acts 1971, No. 1407, p. 2378, § 302.)

§ 20-2-52. Registration of persons manufacturing, distributing, or dispensing controlled substances--Standards; requirements as to practitioners conducting research; effect of federal registration. *Current through the end of the 2010 Regular Session.*

(a) The certifying boards shall register only an applicant certified by their respective boards to manufacture, dispense or distribute controlled substances enumerated in Schedules I, II, III, IV and V; provided, that the State Board of Pharmacy shall register all manufacturers and wholesalers unless they determine that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the above-mentioned boards shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(2) Compliance with applicable state and local law;

(3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed

under this article;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The State Board of Health need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the State Board of Health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

CREDIT(S)

(Acts 1971, No. 1407, p. 2378, § 303; Acts 1976, No. 699, p. 965, § 3.)

§ 20-2-53. Registration of persons manufacturing, distributing, or dispensing controlled substances--Order to show cause; proceedings; review; issuance of stay. *Current through the end of the 2010 Regular Session.*

(a) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the certifying boards shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the certifying board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with the Alabama Administrative Procedure Act and the procedures established by the respective certifying board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) Anyone adversely affected by any order of a certifying board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation, or registration is limited, may obtain judicial review thereof by filing a written petition for review with the Circuit Court of Montgomery County in accordance with Section 41-22-20.

(c) The following procedures shall take precedence over subsection (c) of Section 41-22-20 relating to the issuance of a stay of any order of the certifying board suspending, revoking, or restricting a registration. The suspension, revocation, or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the certifying board to suspend, revoke, or restrict a registration unless a reviewing

court, upon proof by the party seeking judicial review, finds in writing that the action of the certifying board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of a certifying board, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama.

(d) From the judgment of the circuit court, either the certifying board or the affected party who invoked the review may obtain a review of any final judgement of the circuit court under Section 41-22-21. No security shall be required of the certifying board.

CREDIT(S)

(Acts 1971, No. 1407, p. 2378, § 305; Acts 1982, No. 82-492, p. 815, § 2; Act 2002-140, p. 359, § 3.)

§ 20-2-54. Registration of persons manufacturing, distributing, or dispensing controlled substances--Revocation or suspension of registration--Grounds and procedure generally.

Current through the end of the 2010 Regular Session.

(a) A registration under Section 20-2-52 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the certifying boards upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this article;

(2) Has been convicted of a crime under any state or federal law relating to any controlled substance;

(3) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;

(4) Has violated the provisions of Chapter 23 of Title 34; or

(5) Has, in the opinion of the certifying board, excessively dispensed controlled substances for any of his patients.

a. A registrant may be considered to have excessively dispensed controlled substances if his certifying board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of his patient's illnesses or conditions. Drug addiction shall not be considered an illness or condition which would justify continued dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

b. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled

Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

1. Narcolepsy.
2. Hyperkinesis.
3. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control.
4. Epilepsy.
5. Differential psychiatric evaluation of clinically significant depression provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression.
6. Clinically significant depression shown to be refractory to other therapeutic modalities provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression;

or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

(b) The certifying boards may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the certifying boards suspend or revoke a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The certifying boards shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders suspending or revoking registration and all forfeitures of controlled substances.

CREDIT(S)

(Acts 1971, No. 1407, p. 2378, § 304; Acts 1979, No. 79-204, p. 313, § 1; Acts 1983, 4th Ex. Sess., No. 83-890, § 2; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

§ 20-2-54.1. Rules and regulations. *Current through the end of the 2010 Regular Session.*

The certifying boards under the Alabama Uniform Controlled Substances Act, the State Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate such rules and regulations as may be required to implement the provisions of this chapter.

CREDIT(S)

(Acts 1983, 4th Ex. Sess., No. 83-890, § 4.)

§ 20-2-55. Registration of persons manufacturing, distributing, or dispensing controlled substances--Revocation or suspension of registration--Suspension without prior order to show cause. *Current through the end of the 2010 Regular Session.*

The certifying boards may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 20-2-54 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the certifying boards or dissolved by a court of competent jurisdiction.

CREDIT(S)

(Acts 1971, No. 1407, p. 2378, § 305.)

§ 20-2-56. Maintenance of records and inventories by registrants generally. *Current through the end of the 2010 Regular Session.*

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules issued by the State Board of Medical Examiners, the State Board of Health or the State Board of Pharmacy.

CREDIT(S)

(Acts 1971, No. 1407, p. 2378, § 306; Acts 1976, No. 699, p. 965, § 4.)

§ 20-2-57. Distribution of certain controlled substances by one registrant to another registrant. *Current through the end of the 2010 Regular Session.*

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

CREDIT(S)

(Acts 1971, No. 1407, p. 2378, § 307.)

§ 20-2-58. Dispensing of controlled substances in Schedule II; maintenance of records and inventories by registered pharmacies. *Current through the end of the 2010 Regular Session.*

(a) Except as otherwise provided in this section or as otherwise provided by law, a pharmacist may dispense directly a controlled substance in Schedule II only pursuant to a written prescription signed by the practitioner. Except as provided in subsections (b) and (c), a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the agent of the practitioner to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance.

(b) A prescription written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the agent of the practitioner to the home infusion pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(c) A prescription written for Schedule II substances for a resident of a long-term care facility may be transmitted by the practitioner or the agent of the practitioner to the dispensing pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for the substances shall be maintained in a separate prescription file.

(2) Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in the form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for the substances shall be maintained either in separate prescription file for controlled substances listed in Schedules III, IV, and V only or in the form that they are readily retrievable from the other prescription records of the pharmacy.

(e) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug as determined under State Board of Health statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(f) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(g) In an emergency situation, a pharmacist may dispense a Schedule II controlled substance for a resident of a long-term care facility, a patient receiving hospice services, or a patient receiving home health care services pursuant to an emergency oral prescription transmitted by the practitioner to the dispensing pharmacy. The quantity dispensed pursuant to an emergency oral prescription shall be limited to the amount adequate to treat the patient during the emergency period not to exceed 72 hours. The practitioner, within seven days of the emergency oral prescription, shall provide the dispensing pharmacy with a written prescription for the quantity prescribed.

CREDIT(S)

(Acts 1971, No. 1407, p. 2378, § 308; Acts 1995, No. 95-732, p. 1565, § 1; Act 98-617, p. 1358, § 1; Act 2006-183, p. 256, § 1.)

Act 2011-571

1 HB451
2 129801-4
3 By Representatives Henry, Lindsey, Boyd, Hill, Galliher,
4 McClurkin, Newton (D), Wallace, Beech, Melton, England,
5 McMillan, Mitchell, Gaston, Collins, Nordgren, Fincher,
6 McCutcheon, Treadaway, Morrow, Sanderford, Farley, Tuggle,
7 McAdory, Patterson, Baughn, Roberts, Williams (D), Burdine,
8 Davis, Todd, Moore (M), Rogers, Robinson (O), Scott, Newton
9 (C), Givan, Poole, Faust, Knight, McClammy, Thomas,
10 McCampbell, Colston, Love, Grimsley, Howard, Beckman, Forte,
11 Hammon, Mask, Chesteen, Greeson, Shiver, Johnson (K), Laird,
12 Coleman, Black, Warren, Hurst, Moore (B), Bridges, Jones,
13 DeMarco, Boman, Boothe, Greer, Johnson (R), Long, Millican and
14 Williams (J)
15 RFD: Children and Senior Advocacy
16 First Read: 05-APR-11

1
2 ENROLLED, An Act,

3 Relating to the practice of dentistry and dental
4 hygiene; to amend Sections 34-9-2, 34-9-3, 34-9-5, 34-9-6,
5 34-9-6.1, 34-9-7, 34-9-8, 34-9-9, 34-9-10, 34-9-13, 34-9-15,
6 34-9-15.1, 34-9-16, 34-9-18, 34-9-20, 34-9-21, 34-9-22,
7 34-9-24, 34-9-26, 34-9-27, 34-9-28, 34-9-40, 34-9-41, 34-9-43,
8 34-9-44, 34-9-60, 34-9-63, 34-9-82, and 34-9-89 of the Code of
9 Alabama 1975, to provide legislative intent; to reference both
10 licensed and permitted dentists and dental hygienists; to
11 remove the maximum fine limitation for violation of the Dental
12 Practice Act; to provide for the regulation of bleaching of
13 human teeth; to provide further for the regulation of both
14 mobile dental facilities and portable dental operations; to
15 provide for dental faculty teaching certificates and dental
16 faculty special teaching permits; to specify the authority of
17 certain exempt entities to practice; to provide for the
18 operation of certain 501(c)(3) entities operating dental
19 clinics under the Dental Practice Act; to extend the time
20 limit for licensure by examination not given by the board and
21 for licensure after clinical residency or military service; to
22 provide further for the submission of affidavits by licensed
23 practitioners; to provide an inactive status for special
24 purpose licensees to practice across state lines; to provide
25 for registration by electronic format; to specify that the

1 requirement for a dentist to release records survives the sale
2 of his or her practice; to delete the minimum fee schedule; to
3 provide maximum fees for special purpose licensure renewal,
4 dental faculty special teaching permit fees, and mobile dental
5 facility/portable dental operation application for certificate
6 of registration and renewal fees; to increase the dental
7 hygiene annual registration fee; to allow the board to
8 discipline licensees for using fraud or deceit to obtain a
9 license or for prescribing a drug for any condition not
10 dentally related; to increase board imposed administrative
11 fines; to revise certain antiquated terminology; to require
12 licensee changes in address or employment to be reported to
13 the board in writing; to provide for the electronic submission
14 of ballots for the election of board members; to provide
15 further for the election process; to provide further for the
16 employment of board staff; to remove the requirement that
17 investigators be paid a subsistence allowance by the board; to
18 provide that an applicant may reapply for a permit to use
19 anesthesia after the correction of deficiencies in an original
20 evaluation and inspection by examiners; to require a dentist
21 utilizing parenteral sedation to be trained in advanced
22 cardiac life support; to require written informed consent of a
23 patient or guardian before undergoing a procedure using a
24 sedative agent; to add Section 34-9-7.2 to the Code of Alabama
25 1975, to require 501(c)(3) entities operating dental clinics

1 to register with the State Board of Dental Examiners; to
2 require 501(c)(3) entities operating dental clinics to have
3 licensed dentists serving as chief of dental services for all
4 clinics; and to require professional employees of the clinics
5 to otherwise comply with the dental licensing law.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 34-9-2, 34-9-3, 34-9-5, 34-9-6,
8 34-9-6.1, 34-9-7, 34-9-8, 34-9-9, 34-9-10, 34-9-13, 34-9-15,
9 34-9-15.1, 34-9-16, 34-9-18, 34-9-20, 34-9-21, 34-9-22,
10 34-9-24, 34-9-26, 34-9-27, 34-9-28, 34-9-40, 34-9-41, 34-9-43,
11 34-9-44, 34-9-60, 34-9-63, 34-9-82, and 34-9-89 of the Code of
12 Alabama 1975, are amended to read as follows:

13 "§34-9-2.

14 "(a) The Legislature hereby declares that the
15 practice of dentistry ~~affects~~ and the practice of dental
16 hygiene affect the public health, safety, and welfare and
17 should be subject to regulation. It is further declared to be
18 a matter of public interest and concern that the dental
19 profession merit and receive the confidence of the public and
20 that only qualified dentists be permitted to practice
21 dentistry and only qualified dental hygienists be permitted to
22 practice dental hygiene in the State of Alabama. All
23 provisions of this chapter relating to the practice of
24 dentistry and dental hygiene shall be liberally construed to
25 carry out these objects and purposes.

1 "(b) The Legislature also finds and declares that,
2 because of technological advances and changing practice
3 patterns, the practice of dentistry and the practice of dental
4 hygiene is occurring with increasing frequency across state
5 lines and that the technological advances in the practice of
6 dentistry and in the practice of dental hygiene are in the
7 public interest.

8 "(c) The Legislature further finds and declares that
9 the practice of dentistry ~~is~~ and the practice of dental
10 hygiene are each a privilege. The licensure by this state of
11 nonresident dentists who engage in dental practice and persons
12 who engage in the practice of dental hygiene within this state
13 ~~is~~ are within the public interest. The ability to discipline
14 the nonresident dentists and dental hygienists who engage in
15 dental practice in this state is necessary for the protection
16 of the citizens of this state and for the public interest,
17 health, welfare, and safety.

18 "§34-9-3.

19 "It shall be unlawful for any person to practice
20 dentistry in the State of Alabama except the following:

21 "(1) Those who are now duly licensed or permitted
22 dentists, pursuant to law.

23 "(2) Those who may be hereafter duly licensed or
24 permitted and who are currently registered as dentists,
25 pursuant to this chapter.

1 "(3) Those nonresident dentists who have been issued
2 a special purpose license to practice dentistry across state
3 lines in accordance with Section 34-9-10. This subdivision
4 shall not apply to those dentists who hold a full,
5 unrestricted, and current license or permit issued pursuant to
6 Section 34-9-8 or Section 34-9-10.

7 "§34-9-5.

8 "Any person who shall ~~practice dentistry,~~ engage in
9 the practice of dentistry across state lines,~~or practice~~
10 dentistry or dental hygiene in this state within the meaning
11 of this chapter without having first obtained from the board a
12 license and an annual registration certificate, when the
13 certificate is required by this chapter, or who violates this
14 chapter, or who willfully violates any published rule or
15 regulation of the board, or who does any act described in this
16 chapter as unlawful, the penalty for which is not herein
17 specifically provided, shall be guilty of a misdemeanor and
18 upon conviction shall be punished by a fine of not more than
19 ~~one thousand dollars (\$1,000)~~ five thousand dollars (\$5,000)
20 for each offense, to be fixed by the court trying the case,
21 and in addition thereto may be, in the discretion of the
22 court, sentenced to hard labor for the county for a period not
23 to exceed 12 months.

24 "§34-9-6.

1 "Any person shall be deemed to be practicing
2 dentistry who does any of the following:

3 "(1) Performs ~~performs~~, or attempts or professes to
4 perform, any dental operation or dental service of any kind,
5 gratuitously or for a salary, fee, money or other remuneration
6 paid, or to be paid, directly or indirectly, to himself or
7 herself, or to any person in his or her behalf, or to any
8 agency which is a proprietor of a place where dental
9 operations or dental services are performed;~~or.~~

10 "(2) Directly ~~(1) Who directly~~ or indirectly, by any
11 means or method, makes impression of the human tooth, teeth,
12 jaws or adjacent tissue, or performs any phase of any
13 operation incident to the replacement of a tooth or any part
14 thereof;~~or.~~

15 "(3) ~~(2)~~ Supplies artificial substitutes for the
16 natural teeth, and who furnishes, supplies, constructs,
17 reproduces, or repairs any ~~prosthetic denture, bridge~~
18 prosthesis (fixed or removable), appliance, or any other
19 structure to be worn in the human mouth;~~or.~~

20 "(4) Places ~~(3) Who places~~ such appliance or
21 structure in the human mouth, or adjusts,~~or attempts,~~ or
22 professes to adjust the same, or delivers the same to any
23 person other than the dentist upon whose prescription the work
24 was performed;~~or.~~

1 "(5) Professes ~~(4) Who professes~~ to the public by
 2 any method to furnish, supply, construct, reproduce, or repair
 3 any ~~prosthetic denture, bridge~~ prosthesis (fixed or
 4 removable), appliance, or other structure to be worn in the
 5 human mouth, or who diagnoses, or professes to diagnose,
 6 prescribe for, professes to prescribe for, treats or professes
 7 to treat disease, pain, deformity, deficiency, injury, or
 8 physical condition of the human teeth or jaws, or adjacent
 9 structure, or who extracts or attempts to extract human teeth,
 10 or remove tumors, abnormal growths, or other lesions from the
 11 human gums, jaws, and adjacent structures, or who operates for
 12 ~~harelip or cleft lip or palate, or both;~~ or who treats
 13 surgically or mechanically fractures of the human jaw; or who
 14 administers local or general anesthetics in the treatment of
 15 any dental lesion,~~or.~~

16 "(6) Repairs ~~(5) Who repairs~~ or fills cavities in
 17 the human teeth,~~or.~~

18 "(7) Uses ~~(6) Who uses~~ a roentgenor ~~X-ray,~~
 19 radiograph, or digital imaging machine for the purpose of
 20 ~~taking~~ making dental ~~X-rays or roentgenograms,~~ radiographs, or
 21 digital images, or who gives, or professes to give,
 22 interpretations or readings of dental ~~X-ray or roentgenograms,~~
 23 radiographs, or digital images, or ~~X-ray~~ radiographic or
 24 roentgen therapy,~~or.~~

1 "(8) Administers ~~(7) Who administers~~ an anesthetic
2 of any nature in connection with a dental ~~operation; or~~
3 procedure.

4 "(9) Uses ~~(8) Who uses~~ the words "dentist," "dental
5 surgeon," "oral surgeon," or the letters "D.D.S.," "D.M.D." or
6 any other words, letters, title, or descriptive matter which
7 in any way represents him or her as being able to diagnose,
8 treat, prescribe, or operate for any disease, pain, deformity,
9 deficiency, injury, or physical condition of the teeth or
10 jaws, or adjacent structures;~~or.~~

11 "(10) States ~~(9) Who states,~~ or professes, or
12 permits to be stated or professed by any means or method
13 whatsoever that he or she can perform or will attempt to
14 perform dental ~~operations~~ procedures, or render a diagnosis
15 connected therewith;~~or.~~

16 "(11) Performs ~~(10) Who performs~~ any clinical
17 operation included in the curricula of recognized dental
18 colleges; provided, that members of the faculty, teachers,
19 instructors, fellows, interns, residents, dental students, and
20 student dental hygienists who are employed by or who are
21 taking courses or instructions at the University of Alabama
22 School of Dentistry or such other dental colleges, hospitals,
23 or institutions in Alabama, as may be approved by the board;
24 and provided, that the work of fellows, interns, residents,
25 dental students, and student dental hygienists is performed

1 within the facilities of such dental colleges, hospitals, and
 2 institutions under the supervision of an instructor and as an
 3 adjunct to his or her course of study or training, shall not
 4 be required to take examination or obtain a license
 5 certificate and renewal license certificate when all of such
 6 work, dental ~~operations~~ procedures, and activities are
 7 confined to his or her work in the college, hospital, or other
 8 institution and the work is done without remuneration other
 9 than the regular salary or compensation paid by such colleges,
 10 hospitals, or other institutions.

11 "(12) Professes to the public by any method to
 12 bleach human teeth, performs bleaching of the human teeth
 13 alone or within his or her business, or instructs the public
 14 within his or her business, or through any agent or employee
 15 of his or her business, in the use of any tooth bleaching
 16 product.

17 "§34-9-6.1.

18 "(a) For purposes of this section, the following
 19 words have the following meanings:

20 "(1) DENTAL HOME. The dental home is the ongoing
 21 relationship between the dentist and the patient, inclusive of
 22 all aspects of oral health care, delivered in a comprehensive,
 23 continuously accessible, coordinated, and family-centered way.

24 ~~"(2) MOBILE DENTAL FACILITY or PORTABLE DENTAL~~
 25 ~~OPERATION.~~ Any self-contained facility in which dentistry or

1 dental hygiene is practiced which may be moved, towed, or
2 transported from one location to another.

3 "(3) OPERATOR. A person licensed to practice
4 dentistry in this state or an entity which is approved as tax
5 exempt under Section 501(c)(3) of the Internal Revenue Code
6 which employs dentists licensed in the state to operate a
7 mobile dental facility or portable dental operation.

8 "(4) PORTABLE DENTAL OPERATION. The use of portable
9 dental delivery equipment which is set up on site to provide
10 dental services outside of a mobile dental facility or a
11 dental office and uses non-fixed dental equipment and
12 independent plumbing.

13 "(b) In order to operate a mobile dental facility or
14 portable dental operation, an operator shall first obtain a
15 certificate of registration issued by the ~~Board of Dental~~
16 ~~Examiners~~ board. The operator shall complete an application in
17 the form and manner required by the board and shall meet all
18 qualifications established by rules of the board.

19 "(c) A mobile dental facility ~~or portable dental~~
20 ~~operation~~ shall comply with all of the following requirements:

21 "(1) The operator shall maintain an official
22 business address which shall not be a post office box and
23 which shall be within this state and be associated with an
24 established dental facility which shall have an official
25 business address on record with the ~~Board of Dental Examiners~~

1 board. The address shall be filed with the board as part of
2 the application for a certificate of registration.

3 "(2) The operator shall maintain an official
4 telephone number of record which shall be accessible 24 hours
5 a day and which shall be filed with the board as part of the
6 application for a certificate of registration. The telephone
7 number shall have 911 capability.

8 "(3) The board shall be notified within 30 days of
9 any change in address, location, or telephone number of
10 record. The notification shall also include the method by
11 which patients are notified of the change of address,
12 location, or telephone number of record. For purposes of this
13 subdivision, patient shall mean any individual who has
14 received treatment or consultation of any kind within two
15 years of the date of the proposed change of address, location,
16 or telephone number of record.

17 "(4) All written or printed documents available from
18 or issued by the mobile dental facility ~~or portable dental~~
19 ~~operation~~ shall contain the official business address and
20 telephone number of record for the mobile dental facility ~~or~~
21 ~~portable dental operation~~.

22 "(5) When not in transit, all dental and official
23 records shall be maintained at the official business address.

24 "(6) The operator shall maintain a written procedure
25 for emergency follow-up care for patients treated in a mobile

1 dental facility ~~or a portable dental operation,~~ which includes
2 arrangements for treatment in a dental facility that is
3 permanently established in the area within a 50-mile radius
4 where services are provided subject to a qualified dentist
5 being located in the area and subject to the dentist agreeing
6 to provide follow-up care. An operator who either is unable to
7 identify a qualified dentist in the area or is unable to
8 arrange for emergency follow-up care for patients otherwise
9 shall be obligated to provide the necessary ~~follow up~~
10 follow-up care via the mobile dental facility ~~or portable~~
11 ~~dental operation~~ or the operator may choose to provide the
12 follow-up care at his or her established dental practice
13 location in the state or at any other established dental
14 practice in the state which agrees to accept the patient. An
15 operator who fails to arrange or provide follow-up care as
16 required herein shall be considered to have abandoned the
17 patient, and ~~will subject~~ the operator and any dentist or
18 dental hygienist, or both, who fail to provide the referenced
19 follow-up ~~treatment~~ care shall be subject to disciplinary
20 action by the board.

21 "(7) The mobile dental facility ~~or a portable dental~~
22 ~~operation~~ shall have communication ~~facilities~~ abilities that
23 ~~will~~ enable the operator to contact necessary parties in the
24 event of a medical or dental emergency. The communication
25 ~~facilities~~ abilities shall enable the patient or the parent or

1 guardian of the patient treated to contact the operator for
2 emergency care, follow-up care, or information about treatment
3 received. The provider who renders follow-up care must also be
4 able to contact the operator and receive treatment
5 information, including radiographs.

6 "(8) The mobile dental facility ~~or a portable dental~~
7 ~~operation~~ and the dental procedures performed therein shall
8 comply with all applicable federal and state laws and all
9 applicable rules of the board promulgated pursuant to Section
10 34-9-43.

11 "(9) Any driver of a mobile dental facility ~~or a~~
12 ~~portable dental operation~~ shall possess a valid Alabama
13 driver's license appropriate for the operation of the vehicle.
14 A copy of the driver's license of each driver shall be
15 submitted to the board at least 30 days prior to the
16 individual operating a mobile dental facility ~~or a portable~~
17 ~~dental operation~~.

18 "(10) All mobile dental facilities ~~or portable~~
19 ~~dental operations~~ authorized in this section which are a
20 vehicle or which are to be towed or otherwise transported by
21 another vehicle shall be registered in this state.

22 "(11) The operator of a mobile dental facility ~~or a~~
23 ~~portable dental operation~~ shall not perform services on a
24 minor without the signed consent from the parent or guardian
25 which form shall be established by the board. The consent form

1 shall inquire whether the prospective patient has received
2 dental care from a licensed dentist within one year and if so,
3 the consent form shall request the name, address, and phone
4 number of the dental home. If the information provided to the
5 operator does not identify a dental home for the prospective
6 patient, the operator shall contact the Alabama Medicaid
7 Agency for assistance in identifying a dental home for
8 Medicaid eligible patients. If this information is provided to
9 the operator, the operator shall contact the designated dental
10 home by phone, facsimile, or electronic mail and notify the
11 dental home of the prospective patient's interest in receiving
12 dental care from the operator. If the dental home confirms
13 that an appointment for the prospective patient is scheduled
14 with the dentist, the operator shall encourage the prospective
15 patient or his or her guardian to seek care from the dental
16 home. The consent form shall document that the patient, or
17 legal guardian, understands the prospective patient has an
18 option to receive dental care from ~~either the mobile dental~~
19 ~~facility or portable dental operation~~ or his or her designated
20 dental home if applicable. The consent form shall require the
21 signature of a parent or legal guardian if the patient is a
22 minor.

23 "(12) Each operator of a mobile dental facility ~~or a~~
24 ~~portable dental operation~~ shall maintain a written or

1 electronic record detailing for each location where services
2 are performed all of the following information:

3 "a. The street address of the service location.

4 "b. The dates of each session.

5 "c. The number of patients served.

6 "d. The types of dental services provided and the
7 quantity of each service provided.

8 "e. Any other information requested by rule of the
9 board.

10 "(13) The written or electronic record shall be made
11 available to the board within 10 days of a request.

12 "(14) Each mobile dental facility ~~or a portable~~
13 ~~dental operation must~~ shall possess all applicable county and
14 city licenses or permits to operate at each location.

15 "(d) The mobile dental facility ~~or a portable dental~~
16 ~~operation~~ shall comply with the following physical
17 requirements and inspection criteria:

18 "(1) Ready access in a ramp or lift.

19 "(2) A properly functioning sterilization system.

20 "(3) Ready access to an adequate supply of potable
21 water, including hot water.

22 "(4) A covered galvanized, stainless steel, or other
23 noncorrosive container for deposit of refuse and waste
24 materials.

1 ~~"(5) For operators applying for a certificate of~~
2 ~~registration after July 1, 2008, who have not been issued a~~
3 ~~certificate prior to that date, ready~~ Ready access to toilet
4 facilities which shall be located within the mobile dental
5 facility ~~or portable dental operation~~. Operators applying for
6 a certificate prior to July 1, 2008, are not required to meet
7 this requirement. Any ~~non-profit~~ governmental entity operating
8 a ~~portable~~ mobile dental operation ~~within an existing building~~
9 facility shall only be required to have ready access to toilet
10 facilities ~~within the building~~.

11 "(6) All licenses and permits as required by Section
12 34-9-13 on site.

13 "(7) Ready access to an emergency kit.

14 "(8) Sharps containers and red biohazard equipment
15 available on site.

16 "(e) A portable dental operation shall comply with
17 all of the following requirements:

18 "(1) The operator shall maintain an official
19 business address which shall not be a post office box and
20 which shall be within this state and be associated with an
21 established dental facility which shall have an official
22 business address on record with the board. The address shall
23 be filed with the board as part of the application for a
24 certificate of registration.

1 "(2) The operator shall maintain an official
2 telephone number of record which shall be accessible 24 hours
3 a day and which shall be filed with the board as part of the
4 application for a certificate of registration. The telephone
5 number shall have E-911 capability.

6 "(3) The board shall be notified within 30 days of
7 any change in address, location, or telephone number of
8 record. The notification shall also include the method by
9 which patients are notified of the change of address,
10 location, or telephone number of record. For purposes of this
11 subdivision, patient shall mean any individual who has
12 received treatment or consultation of any kind within two
13 years of the date of the proposed change of address, location,
14 or telephone number of record.

15 "(4) All written or printed documents available from
16 or issued by the portable dental operation shall contain the
17 official business address and telephone number of record for
18 the portable dental operation.

19 "(5) When not in transit, all dental and official
20 records shall be maintained at the official business address.

21 "(6) The operator shall maintain a written procedure
22 for emergency follow-up care for patients treated in a
23 portable dental operation, which includes arrangements for
24 treatment in a dental facility that is permanently established
25 in the area within a 50-mile radius where services are

1 provided subject to a qualified dentist being located in the
2 area and subject to the dentist agreeing to provide follow-up
3 care. An operator who either is unable to identify a qualified
4 dentist in the area or is unable to arrange otherwise for
5 emergency follow-up care for patients shall be obligated to
6 provide the necessary follow-up care via the portable dental
7 operation, or the operator may choose to provide the follow-up
8 care at his or her established dental practice location in the
9 state or at any other established dental practice in the state
10 which agrees to accept the patient. An operator who fails to
11 arrange or provide follow-up care as required herein shall be
12 considered to have abandoned the patient, and the operator and
13 any dentist or dental hygienist, or both, who fail to provide
14 the referenced follow-up care shall be subject to disciplinary
15 action by the board.

16 "(7) The portable dental operation shall have
17 communication abilities that enable the operator to contact
18 necessary parties in the event of a medical or dental
19 emergency. The communication abilities shall enable the
20 patient or the parent or guardian of the patient treated to
21 contact the operator for emergency care, follow-up care, or
22 information about treatment received. The provider who renders
23 follow-up care must also be able to contact the operator and
24 receive treatment information, including radiographs.

1 "(8) The portable dental operation and the dental
2 procedures performed therein shall comply with all applicable
3 federal and state laws and all applicable rules of the board
4 promulgated pursuant to Section 34-9-43.

5 "(9) The operator of a portable dental operation may
6 not perform services on a minor without the signed consent
7 from the parent or guardian on a form established by the
8 board. The consent form shall request information as to
9 whether the prospective patient has received dental care from
10 a licensed dentist within one year and, if so, shall request
11 the name, address, and phone number of the dental home. If the
12 information provided to the operator does not identify a
13 dental home for the prospective patient, the operator shall
14 contact the Alabama Medicaid Agency for assistance in
15 identifying a dental home for Medicaid eligible patients. If
16 this information is provided to the operator, the operator
17 shall contact the designated dental home by phone, facsimile,
18 or electronic mail and notify the dental home of the
19 prospective patient's interest in receiving dental care from
20 the operator. If the dental home confirms that an appointment
21 for the prospective patient is scheduled with the dentist, the
22 operator shall encourage the prospective patient or his or her
23 guardian to seek care from the dental home. The consent form
24 shall document that the patient, or legal guardian,
25 understands the prospective patient has an option to receive

1 dental care from either the portable dental operation or his
2 or her designated dental home, if applicable. The consent form
3 shall require the signature of a parent or legal guardian if
4 the patient is a minor.

5 "(10) Each operator of a portable dental operation
6 shall maintain a written or electronic record detailing for
7 each location where services are performed all of the
8 following information:

9 "a. The street address of the service location.

10 "b. The dates of each session.

11 "c. The number of patients served.

12 "d. The types of dental services provided and the
13 quantity of each service provided.

14 "e. Any other information requested by rule of the
15 board.

16 "(11) The written or electronic record shall be made
17 available to the board within 10 days of a request.

18 "(12) Each portable dental operation shall possess
19 all applicable county and city licenses or permits to operate
20 at each location.

21 "(f) The portable dental operation shall comply with
22 all physical requirements and inspection criteria established
23 by rule of the board and shall comply with the license and
24 permit requirements of Section 34-9-13.

1 "(g) ~~(e)~~ The mobile dental facility or a portable
2 dental operation shall be inspected by the board or its
3 representative prior to receiving a certificate of
4 registration. Once registered, the mobile dental facility or a
5 portable dental operation shall be subject to periodic
6 unannounced audits and inspections by the board.

7 "(h) ~~(f)~~ The mobile dental facility or a portable
8 dental operation shall comply with the current recommendations
9 for infection control practices for dentistry as promulgated
10 by the Centers for Disease Control and any rule of the board
11 relating to infection control or reporting in a dental office.

12 "(i) ~~(g)~~ The initial application for a certificate
13 of registration shall include the full name, address, and
14 telephone number of the dentists and dental hygienists working
15 at the facility or operation. The initial application for a
16 certificate of registration shall also include proof of
17 insurance from a licensed insurance carrier that the operator
18 has in force at least one million dollars (\$1,000,000) of
19 general liability insurance. The operator shall be required to
20 maintain one million dollars (\$1,000,000) of general liability
21 insurance at all times for which the mobile dental facility or
22 portable dental operation is licensed by the Board of Dental
23 Examiners. Governmental entities which operate mobile dental
24 facilities or portable dental operations shall not be required
25 to have or maintain any amount of general liability insurance.

1 The operator shall advise the board in writing within 15 days
2 of any change in the employment of any dentist or dental
3 hygienist working at the facility or operation.

4 "(j) ~~(h)~~ The operator shall notify the board in
5 writing within 10 days of any change made relating to a
6 dentist to whom patients are to be referred for follow-up care
7 as provided in subdivision (6) of subsection (c).

8 "(k) ~~(i)~~ The operator shall notify the board in
9 writing within 10 days of any change in the procedure for
10 emergency follow-up care as provided in subdivision (6) of
11 subsection (c).

12 "(l) ~~(j)~~ At the conclusion of each patient's visit
13 to the mobile dental facility or a portable dental operation,
14 the patient shall be provided with a patient information sheet
15 which shall also be provided to any individual or entity to
16 whom the patient has consented or authorized to receive or
17 access the patient's records. The information sheet shall
18 include at a minimum the following information:

19 "(1) The name of the dentist or dental hygienist, or
20 both, who performed the services.

21 "(2) A description of the treatment rendered,
22 including billing service codes and fees associated with
23 treatment and tooth numbers when appropriate.

1 "(3) If applicable, the name, address, and telephone
2 number of any dentist to whom the patient was referred for
3 follow-up care and the reason for such referral.

4 "(4) The name, address, and telephone number, if
5 applicable, of a parent or guardian of the patient.

6 "(m) ~~(k)~~ In the event a mobile dental facility or a
7 portable dental operation is to be sold, the current operator
8 shall inform the board and the Alabama Medicaid Agency, if the
9 operator is an Alabama Medicaid enrolled provider, at least 10
10 days prior to the sale being completed and shall be required
11 to disclose the purchaser to the board and the Alabama
12 Medicaid Agency, if the operator is an Alabama Medicaid
13 enrolled provider, via certified mail within 10 days after the
14 date the sale is finalized. The operator of a mobile dental
15 facility or a portable dental operation shall notify the board
16 and the Alabama Medicaid Agency, if the operator is an Alabama
17 Medicaid enrolled provider, at least 30 days prior to
18 cessation of operation. Such notification shall include the
19 final day of operation and a copy of the notification shall be
20 sent to all patients and shall include the manner and
21 procedure by which patients may obtain their records or
22 transfer those records to another dentist. It is the
23 responsibility of the operator to take all necessary action to
24 insure that the patient records are available to the patient,
25 a duly authorized representative of the patient, or a

1 subsequent treating dentist. For purposes of this subsection,
2 a patient shall mean any individual who has received any
3 treatment or consultation of any kind within two years of the
4 last date of operation of the mobile dental facility or a
5 portable dental operation.

6 "(n) ~~(i)~~ A mobile dental facility or a portable
7 dental operation that accepts or treats a patient but does not
8 refer patients for follow-up ~~treatment~~ care when such
9 follow-up ~~treatment~~ care is clearly necessary, shall be
10 considered to have abandoned the patient and will subject the
11 operator and any dentist or dental hygienist, or both, who
12 fails to provide the referenced follow-up ~~treatment~~ care to
13 disciplinary action by the board.

14 "(o) ~~(m)~~ In addition to the requirements of this
15 section, any operator, dentist, or dental hygienist working or
16 performing any services at a mobile dental facility or a
17 portable dental operation shall be subject to the provisions
18 of this chapter. Any violation of the provisions of this
19 section shall subject the operator, dentist, or dental
20 hygienist to the penalties provided in Section 34-9-18, and no
21 order imposing penalties pursuant to Section 34-9-18 shall be
22 made or entered except after notice and hearing by the board
23 with any such order being subject to judicial review.

24 "(p) ~~(n)~~ The board may promulgate rules to implement
25 and enforce ~~the provisions of~~ this section.

1 "(q) A mobile dental facility or portable dental
2 operation shall conform to all requirements of this chapter,
3 rules promulgated by the board pursuant to this chapter, any
4 rule or regulation promulgated by the Occupational Safety and
5 Health Administration, the federal Centers for Disease Control
6 and Prevention, and the Alabama Department of Public Health,
7 and any applicable federal, state, or local law, regulation,
8 guideline, or ordinance including, but not limited to, those
9 relating to radiographic equipment, flammability,
10 construction, sanitation, medical waste transportation,
11 zoning, prevention of infection and disease, facility
12 operation, and licenses or permits to operate.

13 "(r) This (o) The provisions of this section shall
14 not apply to any existing Jefferson County Department of
15 Health mobile dental facilities ~~or portable dental operations~~
16 that have been in service providing dental care within
17 Jefferson County prior to December 31, 2007.

18 "(s) (p) This section shall not apply to any mobile
19 dental facility or portable dental operation which is operated
20 during a state of emergency declared by the Governor as
21 authorized in Section 31-9-8.

22 "(t) (q) It is the express intent of the Legislature
23 that no state agency, including, but not limited to, the
24 Alabama Medicaid Agency, shall restrict any mobile dental
25 facility or portable dental operation which complies with the

1 provisions outlined herein and all applicable state and
2 federal rules from participation in its programs.

3 "(u) ~~(r)~~ Notwithstanding any other provision of law,
4 any entity which is approved as tax exempt under Section
5 501(c) (3) of the Internal Revenue Code and employs dentists
6 licensed in this state shall continue to be able to employ
7 dentists licensed in this state and to provide dental services
8 in the same manner and under the same conditions as licensed
9 on June 7, 2008.

10 "§34-9-7.

11 "Nothing in this chapter shall apply to the
12 following practices, acts, and operations:

13 "(1) The practice of his or her profession by a
14 physician or surgeon holding a certificate of qualification as
15 a medical doctor and licensed as such under the laws of this
16 state, provided he or she shall not practice dentistry as a
17 specialty.

18 "(2) The practice of dentistry in the discharge of
19 their official duties by graduate dentists or dental surgeons
20 in the United States Army, Navy, Air Force, or other armed
21 services, public health service including, but not limited to,
22 a federally qualified health center authorized and operating
23 under Section 330 of the Public Health Service Act (42 U.S.C.
24 § 254B), provided, however, that such federally qualified
25 health centers shall register pursuant to Section 34-9-7.2

1 (provided further however, dentists, dental hygienists, and
2 other personnel employed by any public health service which
3 performs dental health care for the general public under
4 programs funded in whole or part by the state or federal
5 government shall be subject to all of the provisions of this
6 chapter and the rules and regulations duly promulgated by the
7 Board of Dental Examiners governing the practice of dentistry
8 and dental hygiene in this state), Coast Guard, or Veteran's
9 Administration.

10 "(3) The practice of dentistry by a licensed dentist
11 of other states or countries at meetings of the Alabama Dental
12 Association or components thereof, or other like dental
13 organizations approved by the board, while appearing as
14 clinicians, or when appearing in emergency cases upon the
15 specific call of dentists duly licensed under this chapter.

16 "(4) The filling of prescriptions of a licensed and
17 registered dentist, as hereinafter provided, by any person or
18 persons, association, corporation, or other entity for the
19 construction, reproduction, or repair of ~~prosthetic dentures,~~
20 ~~bridges, plates, prostheses~~ (fixed or removable) or appliances
21 on a ~~model~~ cast made by or from impressions ~~taken~~ made by a
22 licensed and currently registered dentist, to be used or worn
23 as a substitute for natural teeth; provided, that the person
24 or persons, association, corporation, or other entity, shall
25 not solicit or advertise, directly or indirectly, by mail,

1 card, newspaper, pamphlet, radio, television, Internet, or
2 otherwise, to the general public to construct, reproduce, or
3 repair ~~prosthetic dentures, bridges, plates, prostheses~~ (fixed
4 or removable) or other appliances to be used or worn as
5 substitutes for natural teeth.

6 "(5) The use of roentgen machines or other ~~rays~~
7 means for making ~~radiograms~~ radiographs, digital images, or
8 similar records, of dental or oral tissues under the
9 supervision of a licensed dentist or physician; provided, that
10 the services shall not be advertised by any name whatever as
11 an aid or inducement to secure dental patronage, and no person
12 shall advertise that he or she has, leases, owns, or operates
13 a roentgen or other machine for the purpose of making dental
14 ~~radiograms~~ radiographs or images, of the human teeth or
15 tissues or the oral cavity, or administering treatments
16 thereto for any disease thereof.

17 "(6) The giving of a general anesthetic by a nurse
18 anesthetist who administers a general anesthetic under the
19 direct supervision of a duly licensed dentist to a patient who
20 is undergoing dental treatment rendered by the dentist.

21 "(7) The use of a nurse in the practice of
22 professional or practical nursing, as defined in Sections
23 34-21-1 through 34-21-26, by a dentist.

1 "(8) A dentist who engages in the practice of
2 dentistry across state lines in an emergency, as defined by
3 the board.

4 "(9) A dentist who engages in the practice of
5 dentistry across state lines on an irregular or infrequent
6 basis. The "irregular or infrequent" practice of dentistry
7 across state lines is considered to occur if the practice
8 occurs less than 10 times in a calendar year or involves fewer
9 than 10 patients in a calendar year, or the practice comprises
10 less than one percent of the diagnostic or therapeutic
11 practice of the dentist.

12 "(10) A dentist or dental hygienist on active duty,
13 or performing his or her duties as a reservist in the
14 military, is not subject to any fee required for a special
15 purpose license to practice dentistry across state lines. The
16 dentist or dental hygienist shall notify the board in advance
17 of his or her participation in military activities and shall
18 forward a copy of his or her current dental license or permit,
19 or both, to the board. The dentist or dental hygienist shall
20 also provide proof of military status and any orders requiring
21 him or her to perform dental treatment services in this state.

22 "§34-9-8.

23 "(a) The board shall annually issue dental faculty
24 teaching permits to persons who are bona fide members of the
25 faculty of a dental college, if they hold a dental degree but

1 are not licensed and registered to practice dentistry or
2 dental hygiene in the state. The dean of any dental college
3 located in the state shall annually certify to the board the
4 bona fide members of the clinical faculty of the college who
5 are not licensed and registered to practice dentistry or
6 dental hygiene in the state. The board shall issue teaching
7 permits to applicants upon the certification by the dean. The
8 teaching permits shall be invalid if the holder ceases to be a
9 member of the clinical faculty of the dental college. The dean
10 of any dental college shall promptly notify the board
11 regarding changes in the faculty which affect the eligibility
12 of a faculty member to possess a teaching permit. The holder
13 of a teaching permit shall be subject to this chapter and may
14 perform all clinical operations which a person licensed to
15 practice dentistry or dental hygiene in the state is entitled
16 to perform. The operations may only be performed within the
17 facilities of the dental college ~~and~~ or any other facility
18 approved by the board as an adjunct to his or her teaching
19 functions in the college. An annual fee established pursuant
20 to this chapter shall be paid to the board when the teaching
21 permit is issued.

22 "(b) The board shall annually issue dental faculty
23 special teaching permits to persons who are bona fide members
24 of the faculty of a dental college if they hold a dental
25 degree but are not licensed and registered to practice

1 dentistry or dental hygiene in the state. The dean of any
2 dental college located in the state shall annually certify to
3 the board the bona fide members of the clinical faculty of the
4 college who are not licensed and registered to practice
5 dentistry or dental hygiene in the state. The board shall
6 issue special teaching permits to applicants upon
7 certification by the dean. The special teaching permits shall
8 be invalid if the holder ceases to be a member of the clinical
9 faculty of the dental college. The dean of any dental college
10 shall promptly notify the board regarding changes in the
11 faculty which affect the eligibility of a faculty member to
12 possess a special teaching permit. The holder of a special
13 teaching permit shall be subject to this chapter and may
14 perform all clinical operations on his or her private patients
15 which a person licensed to practice dentistry or dental
16 hygiene in the state is entitled to perform. The clinical
17 operations may only be performed within the faculty private
18 practice facilities of the dental college or any other
19 facility approved by the board. An annual fee established
20 pursuant to this chapter shall be paid to the board when the
21 special teaching permit is issued.

22 "§34-9-9.

23 "(a) No person other than a dentist licensed
24 pursuant to this chapter or a 501(c)(3) entity registered
25 under Section 34-9-7.2 may do any of the following:

1 "(1) Employ a dentist, dental hygienist, or both in
2 the operation of a dental office;~~;-~~_

3 "(2) Place in the possession of a dentist, dental
4 hygienist, or other agent such dental material or equipment as
5 may be necessary for the management of a dental office on the
6 basis of a lease or any other agreement for compensation for
7 the use of such material, equipment, or offices;~~or.~~_

8 "(3) Retain the ownership or control of dental
9 equipment, material, or office and make the same available in
10 any manner for the use of a dentist, dental hygienist, or
11 other agent.

12 "(4) The term "person" as used in this section,
13 shall not in any way pertain to state, county, municipal, or
14 city institutions but shall be deemed to include any
15 individual, firm, partnership, corporation, or other entity
16 not licensed to practice dentistry in the State of Alabama.

17 "(5) Nothing in this subsection shall apply to bona
18 fide sales of dental equipment, material, or office secured by
19 a chattel mortgage or retention title agreement, or to an
20 agreement for the rental of the equipment or office by bona
21 fide lease at a reasonable amount, and under which agreement
22 the licensee under this chapter maintains complete care,
23 custody, and control of the equipment and the practice.
24 Further, nothing in this subsection shall prohibit or restrict
25 persons, firms, or corporations from employing or retaining

1 licensed dentists to furnish dental treatment for their
 2 employees or dependents of their employees.

3 "(b) A prohibited business arrangement or
 4 relationship as defined in subsection (a) shall not be
 5 considered a violation of that subsection if a prohibited
 6 arrangement or relationship results from the death of a
 7 licensed dentist and is cured within 12 months of the date of
 8 the death.

9 "(c) The purpose of this section is to prevent a
 10 non-dentist from influencing or otherwise interfering with the
 11 exercise of a dentist's independent professional judgment. In
 12 addition to the acts specified in subsection (a), no person,
 13 other than a dentist licensed in accordance with this chapter,
 14 shall enter into a relationship with a person licensed under
 15 this chapter pursuant to which the unlicensed person exercises
 16 control over the ~~following:~~

17 "~~(1)~~ The selection of a course of treatment for a
 18 patient, the procedures or materials to be used as a part of
 19 such course of treatment, ~~and or~~ the manner in which such
 20 course of treatment is carried out by the licensee; ~~;~~

21 "(d) No person other than a dentist licensed
 22 pursuant to this chapter or a 501(c)(3) entity registered
 23 under Section 34-9-7.2 shall exercise control over any of the
 24 following:

25 "~~(2)~~ (1) The patient records of a dentist; ~~;~~

1 "~~(3)~~ (2) Policies and decisions relating to pricing,
2 credit, refunds, warranties, and advertising; ~~and.~~ _

3 "~~(4)~~ (3) Decisions relating to office personnel and
4 hours of practice.

5 "~~(d)~~ (e) Any licensed dentist or dental hygienist who
6 enters into any of the arrangements or relationships ~~described~~
7 in violation of subsection (a) or subsection (c) with an
8 unlicensed person as defined above, may be subject to any of
9 the penalties set forth in Section 34-9-18.

10 "§34-9-10.

11 "(a) Every person who desires to practice dentistry
12 within the State of Alabama shall file an application
13 prescribed by the board. Notwithstanding the method of
14 obtaining licensure or any particular requirement set forth
15 herein, every person as a prerequisite to licensure must be at
16 least 19 years of age, of good moral character, a citizen of
17 the United States or, if not a citizen of the United States, a
18 person who is legally present in the United States with
19 appropriate documentation from the federal government, a
20 graduate of a dental school or college accredited by the
21 American Dental Association Commission on Dental Accreditation
22 and approved by the board and must satisfy any other
23 requirement set forth in any rule adopted by the board.

24 "(b) Licensure by examination shall be applicable to
25 the following categories:

1 "(1) Those individuals who have never been licensed
2 or taken an examination and whose application to take an
3 examination administered or approved by the board is received
4 by the board within 18 months of graduation from dental
5 school.

6 "(2) Those individuals who have successfully passed
7 an examination approved but not administered by the board so
8 long as an application for licensure is received by the board
9 within ~~18 months~~ five years of the date of notification of
10 passing such examination. All applicants shall pay a fee which
11 shall accompany the application.

12 "(c) Any individual who possesses a current license
13 in any state, who has passed an examination approved by the
14 board and who has, since graduation from dental or dental
15 hygiene school, practiced or participated in a clinical
16 residency or practiced dentistry or dental hygiene in the
17 Armed Forces or with the public health service shall be
18 eligible for licensure if an application is received by the
19 board within ~~18 months~~ five years of the completion of the
20 subject residency or Armed Forces or public health service
21 commitment. All the above applicants shall pay a fee which
22 shall accompany the application.

23 "(d) Licensure by credentials may be utilized to
24 evaluate the theoretical knowledge and clinical skill of a
25 dentist or dental hygienist when an applicant for licensure by

1 credentials holds a dental or dental hygiene license in
2 another state. The board may promulgate rules and regulations
3 relating to licensure by credentials in addition to any
4 requirements by law. An applicant for licensure by credentials
5 must meet all of the following:

6 "(1) The dentist or dental hygienist must have been
7 engaged in the active practice of clinical dentistry or
8 clinical dental hygiene or in full-time dental or dental
9 hygiene education for the five years or 5,000 hours
10 immediately preceding his or her application.

11 "(2) The applicant must hold a current, valid,
12 unrevoked, and unexpired license in a state having examination
13 standards regarded by the Board of Dental Examiners of Alabama
14 as an equivalent to the Alabama standards.

15 "(3) The board of examiners in the state of current
16 practice must verify or endorse that the applicant's license
17 is in good standing without any restrictions.

18 "(4) The dentist or dental hygienist must not be the
19 subject of a pending disciplinary action in any state in which
20 the individual has been licensed which shall be verified by a
21 query to the National Practitioner Data Bank, the Health
22 Integrity Protection Data Bank, the American Association of
23 Dental Boards Clearing House for Disciplinary Information, or
24 any other pertinent bank currently existing or which may exist
25 in the future.

1 "(5) The applicant must provide a written statement
2 agreeing to be interviewed at the request of the board.

3 "(6) The individual must successfully pass a written
4 jurisprudence examination.

5 "(7) There must be certification from the United
6 States Drug Enforcement Administration and from the state
7 board of any state in which the applicant is or has been
8 licensed that the DEA registration is not the subject of any
9 pending disciplinary action or enforcement proceeding of any
10 kind.

11 "(8) The dentist applicant ~~must~~ shall submit
12 affidavits from two licensed dentists ~~or practicing in the~~
13 same geographical area where the applicant is then practicing
14 or teaching attesting to the moral character, standing, and
15 ability of the applicant. The dental hygiene applicant shall
16 submit affidavits from two licensed dentists or two licensed
17 dental hygienists practicing in the same geographical area
18 where the applicant ~~currently~~ is then practicing or teaching
19 attesting to the ~~applicant's~~ moral character, standing, and
20 ability of the applicant.

21 "(9) The applicant must provide the board with an
22 official transcript with school seal from the school of
23 dentistry or school of dental hygiene which issued the
24 applicant's professional degree or execute a request and
25 authorization allowing the board to obtain the transcript.

1 "(10) The applicant must be a graduate of a dental
2 or dental hygiene school, college, or educational program
3 approved by the board.

4 "(11) The applicant must not be the subject of any
5 pending or final action from any hospital revoking,
6 suspending, limiting, modifying, or interfering with any
7 clinical or staff privileges.

8 "(12) The applicant must not have been convicted of
9 a felony or misdemeanor involving moral turpitude or of any
10 law dealing with the administering or dispensing of legend
11 drugs, including controlled substances.

12 "(13) The board may consider or require other
13 criteria including, but not limited to, any of the following:

14 "a. Questioning under oath.

15 "b. Results of peer review reports from constituent
16 dental societies or federal dental services.

17 "c. Substance abuse testing or treatment.

18 "d. Background checks for criminal or fraudulent
19 activities.

20 "e. Participation in continuing education.

21 "f. A current certificate in cardiopulmonary
22 resuscitation.

23 "g. Recent case reports or oral defense of diagnosis
24 and treatment plans.

1 "h. Proof of no physical or psychological impairment
2 that would adversely affect the ability to practice dentistry
3 or dental hygiene with reasonable skill and safety.

4 "i. An agreement to initiate practice within the
5 State of Alabama within a period of one year.

6 "j. Proof of professional liability coverage and
7 that coverage has not been refused, declined, cancelled,
8 nonrenewed, or modified.

9 "k. Whether the applicant has been subject to any
10 final disciplinary action in any state in which the individual
11 has been licensed which shall be verified by a query in the
12 National Practitioner Data Bank, the Health Integrity
13 Protection Data Bank, the American Association of Dental
14 Boards Clearing House for Disciplinary Information, any state
15 where the applicant has been licensed, or any other pertinent
16 bank currently existing or which may exist in the future.

17 "l. Whether the applicant's DEA registration or any
18 state controlled substances permit has ever been revoked,
19 suspended, modified, restricted, or limited in any way.
20 Provided, however, that any discipline that results only from
21 a failure to timely renew a registration or permit shall not
22 prevent an applicant from being eligible for this method of
23 licensure.

24 "(14) If all criteria and requirements are satisfied
25 and the board determines, after notice and hearing, that the

1 individual committed fraud or in any way falsified any
2 information in the application process, the license may be
3 revoked by the board.

4 "(15) In addition to the requirements for applicants
5 seeking licensure by credentials, an applicant desiring to
6 practice a specialty only must meet the following
7 requirements:

8 "a. The specialty must be one in a branch of
9 dentistry approved by the American Dental Association.

10 "b. The applicant must meet the existing educational
11 requirements and standards set forth by the American Dental
12 Association for that approved specialty.

13 "c. An applicant who chooses to announce or practice
14 a specialty must limit his or her practice exclusively to the
15 announced special area or areas of dental practice.

16 "d. If an applicant who is initially licensed by
17 credentials for a specialty practice decides to renounce his
18 or her specialty and practice general dentistry, and the
19 license originally issued did not require a general dental
20 license but rather a specialty license, or the applicant
21 originally passed only a specialty examination, the applicant
22 may not practice general dentistry until he or she
23 successfully passes the board's regular general dentistry
24 examination. However, if the applicant has passed a general
25 dentistry examination or has a general dentistry license, was

1 practicing a specialty, and decides not to continue that
2 specialty and practice only general dentistry, the applicant
3 is eligible for licensure by credentials as a general dentist.

4 "(e) Notwithstanding the provisions of subsection
5 (a), the board shall issue a special purpose license to
6 practice dentistry across state lines to an applicant who has
7 met the following requirements:

8 "(1) The applicant holds a full and unrestricted
9 license to practice dentistry in any state of the United
10 States or in territories, other than the State of Alabama, in
11 which the individual is licensed.

12 "(2) The applicant has not had any disciplinary
13 action or other action taken against him or her by any state
14 or licensing jurisdiction. If there has been previous
15 disciplinary or other action taken against the applicant, the
16 board may issue a certificate of qualification if it finds
17 that the previous disciplinary or other action indicates that
18 the dentist is not a potential threat to the public.

19 "(3) The applicant submits an application for a
20 certificate of qualification for a special purpose license to
21 practice dentistry across state lines on a form provided by
22 the board, remits an application fee in an amount established
23 by the board, and pays a fee.

24 "(f) A special purpose license issued by the board
25 to practice dentistry across state lines limits the licensee

1 solely to the practice of dentistry across state lines. The
2 special purpose license shall be valid for a period of up to
3 three years, shall expire on a renewal date ~~established~~
4 determined by the board ~~in the third calendar year after its~~
5 ~~issuance~~, and may be renewed upon receipt of a renewal fee as
6 established by the board. Failure to renew a license according
7 to the renewal schedule established by the board shall ~~result~~
8 ~~in the automatic revocation of the special purpose license to~~
9 ~~practice dentistry across state lines~~ cause the special
10 purpose license to be inactive. An applicant may reapply
11 ~~following automatic revocation for failure to renew for a~~
12 special purpose license to practice dentistry across state
13 lines following placement of the license on inactive status.
14 The applicant shall meet the qualifications of subsection (e)
15 in order to be eligible for renewal of the license.

16 "(g) Notwithstanding the provisions of this section,
17 the board shall only issue a special purpose license to
18 practice dentistry across state lines to an applicant whose
19 principal practice location and license to practice are
20 located in a state or territory of the United States whose
21 laws permit or allow for the issuance of a special purpose
22 license to practice dentistry across state lines or similar
23 license to a dentist whose principal practice location and
24 license are located in another state. It is the stated intent
25 of this section that dentists who hold a full and current

1 license in the State of Alabama be afforded the opportunity to
2 obtain, on a reciprocal basis, a license to practice dentistry
3 across state lines in any other state or territory of the
4 United States as a precondition to the issuance of a special
5 purpose license as authorized by this section to a dentist
6 licensed in the other state or territory. The board shall
7 determine which states or territories have reciprocal
8 licensure requirements meeting the qualifications of this
9 section.

10 "(h) Any individual who does not qualify for
11 licensure pursuant to any of the above subsections but who has
12 passed an examination approved by the board and possesses a
13 current license in another state is eligible to apply for
14 licensure upon payment of a fee. The board shall have
15 discretion whether to require an examination for any such
16 individual, including the time, place, type, and content of
17 any such examination.

18 "(i) A current license shall mean one in good
19 standing authorizing the individual to practice in the state
20 of issuance.

21 "§34-9-13.

22 "Every practitioner of dentistry and dental hygiene
23 within the meaning of this chapter shall have in his or her
24 possession a license certificate and an annual registration
25 certificate in the office wherein he or she practices.

1 "§34-9-15.

2 "(a) No person shall practice dentistry or dental
3 hygiene in the State of Alabama unless licensed or permitted
4 by the board and registered annually as required by this
5 chapter. The secretary-treasurer of the board shall ~~mail~~ issue
6 to each licensee an initial registration form which shall
7 contain space for the insertion of name, address, date, and
8 number of license certificate, and other information as the
9 board shall deem necessary. The licensee shall sign and verify
10 the accuracy of the registration before a notary public after
11 which he or she shall forward the registration to the
12 secretary-treasurer of the board together with a fee. Each
13 subsequent registration shall be made in electronic format or
14 by United States mail upon ~~the a form as above prescribed~~
15 ~~except that it need not be verified to be determined by the~~
16 board. On or before October 1 of each year, every dentist and
17 dental hygienist licensed to practice dentistry or dental
18 hygiene in the state shall transmit either online or by United
19 States mail to the secretary-treasurer of the board the
20 completed form prescribed by the board, together with a fee
21 established by the board pursuant to this chapter, and receive
22 ~~therefor~~ thereafter the current annual registration
23 certificate authorizing him or her to continue the practice of
24 dentistry or dental hygiene in the state for a period of one
25 year. Any license ~~and license certificate or permit~~ previously

1 granted under the authority of this chapter or any prior
2 dental practice act shall automatically be suspended if the
3 holder thereof fails to secure the annual registration
4 certificate before January 1, each year. Any dentist or dental
5 hygienist whose license or permit is automatically suspended
6 by reason of failure, neglect, or refusal to secure the annual
7 registration certificate shall be reinstated by the board upon
8 payment of the penalty fee plus all accrued annual
9 registration fees up to a maximum of five years, accompanied
10 with the prescribed form for annual registration of the
11 license or permit. Upon failure of any licensee or permittee
12 to file application for the annual registration certificate
13 and pay the annual registration fee on or before November 30,
14 each year, the board shall notify the licensee or permittee by
15 mail addressed to the last address of record that the
16 application and fee have not been received and that, unless
17 the application and fee are received on or before the first
18 day of January, the license ~~and license certificate~~ or permit
19 shall be automatically suspended. The board shall notify the
20 licensee or permittee by mail addressed to the last address of
21 record of the effective date of the automatic suspension and
22 the provisions for registration of the license or permit. The
23 board shall waive the annual payment of fees herein provided
24 for and issue a current annual registration certificate to any
25 licensee or permittee who, because of age or physical

1 disability, has retired from the practice of dentistry or
2 dental hygiene or who is suffering a malady of a lingering or
3 permanent nature. The board by rule shall waive annual
4 registration and the payment of fees while any licensee is on
5 temporary active duty with any of the Armed Forces of the
6 United States. The waiver of fees herein provided shall be
7 effective so long as the retirement because of age or physical
8 disability or temporary active duty continues.

9 "(b) The board shall adopt and promulgate rules and
10 regulations for the adoption of a program of continuing
11 education for its licensees by October 1, 1991. After that
12 date, the successful completion of continuing education
13 program requirements shall be a requisite for renewal of
14 licenses issued pursuant to this chapter.

15 "§34-9-15.1.

16 "(a) Upon the request of a patient or authorized
17 agent of a patient, a dentist shall promptly release to the
18 patient or his or her authorized agent legible and accurate
19 copies of all records of the patient regardless of how they
20 are generated or maintained. The reasonable costs of
21 reproducing copies shall not be more than the amounts
22 authorized by statute and in the absence of any statutory
23 authority no more than the actual cost of the reproduction.

"(b) The release of records under this section shall not be made contingent upon the payment of any fee or charge owed by the patient.

"(c) The provisions of the section shall survive the closing of a dental office or practice for any reason, including, but not limited to, sale of practice, any disciplinary action, retirement, disability, or death.

"§34-9-16.

"The board shall establish and collect reasonable fees provided for in this chapter within the ranges set forth below and without having to engage in the rulemaking process:

"Description	Not Less Than	Not More Than
"Dental Examination Application Fee	\$200.00	\$750.00
"Dental Examination Fee	\$100.00	\$2,500.00
"Dental Examination Materials Fee	\$200.00	\$500.00
"Dental Licensure by Credentials Application Fee	\$100.00	\$4,000.00
"Dental Licensure by Regional Exam Application Fee	\$100	\$1,000.00
"Special Purpose Licensure	\$200.00	\$750.00

1	Fee		
2	<u>"Special Purpose Licensure</u>		
3	<u>Renewal Fee</u>		<u>\$750.00</u>
4	"Dental Annual Registra-		
5	tion Fee	\$130.00	\$500.00
6	"Dental License Reinstater-		
7	ment Penalty	\$250.00	\$500.00
8	"Dental Hygiene Program		
9	Application Fee	\$50.00	\$500.00
10	"Alabama Dental Hygiene		
11	Training Permit Fee	\$0.00	\$450.00
12	"Alabama Dental Hygiene		
13	Training Education Fee	\$175.00	\$600.00
14	"Alabama Dental Hygiene		
15	Program Instructor Certif-		
16	ication Course Fee	\$75.00	\$200.00
17	"Alabama Dental Hygiene		
18	Program Instructional Ma-		
19	terials Fee	\$500.00	\$950.00
20	"Dental Hygiene By Re-		
21	gional Exam Application		
22	Fee	\$55.00	\$75.00
23	"Dental Hygiene Examina-	\$50.00	\$500.00

1	tion Application Fee		
2	"Dental Hygiene Examina-		
3	tion Fee	\$100.00	\$600.00
4	"Dental Hygiene Examina-		
5	tion Materials Fee	\$100.00	\$400.00
6	"Dental Hygiene Licensure		
7	by Credentials Fee	\$0.00	\$2,000.00
8	"Dental Hygiene Annual		
9	Registration Fee	\$55.00	\$75.00
10	"Dental Hygiene License		
11	Reinstatement Penalty	\$100.00	\$200.00
12	"License Certificate Fee	\$25.00	\$500.00
13	"Duplicate <u>or Replacement</u>		
14	License Fee	\$25.00	\$150.00
15	"Dental Faculty Teaching		
16	Permit Fee	\$150.00	\$350.00
17	" <u>Dental Faculty Special</u>		
18	<u>Teaching Permit Fee</u>		<u>\$500.00</u>
19	"Alabama Controlled Sub-		
20	stance Permit Fee	\$125.00	\$400.00
21	"Alabama Controlled Sub-		
22	stance Permit Renewal Fee	\$100.00	\$400.00
23	"General Anesthesia Permit	\$900.00	\$1,500.00

1	Fee		
2	"General Anesthesia Permit		
3	Renewal Fee	\$200.00	\$750.00
4	"Parenteral Sedation Per-		
5	mit Fee	\$900.00	\$1,500.00
6	"Parenteral Sedation Per-		
7	mit Renewal Fee	\$200.00	\$750.00
8	"Oral Conscious Sedation		
9	Permit Fee	\$100.00	\$250.00
10	"Oral Conscious Sedation		
11	Permit Renewal Fee	\$50.00	\$250.00
12	"Mobile Dental Applica-		
13	tion/Inspection Fee	\$750.00	\$1,500.00
14	"Mobile Dental Renewal Fee	\$250.00	\$1,500.00
15	<u>"Mobile Dental Facil-</u>		
16	<u>ity/Portable Dental Opera-</u>		
17	<u>tion Application for Cer-</u>		
18	<u>tificate of Registration</u>		
19	<u>Fee</u>		<u>\$750.00</u>
20	<u>"Mobile Dental Facil-</u>		
21	<u>ity/Portable Dental Opera-</u>		
22	<u>tion Renewal of Certifi-</u>		
23	<u>cate of Registration Fee</u>		<u>\$500.00</u>

"§34-9-18.

"(a) The board may invoke disciplinary action as outlined in subsection (b) hereof whenever it shall be established to the satisfaction of the board, after hearing as hereinafter provided, that any dentist or dental hygienist has been guilty of the following:

"(1) Fraud, deceit, or misrepresentation, ~~whether knowingly or unknowingly,~~ in obtaining any license, license certificate, annual registration certificate, money, or other thing of value.

"(2) Gross immorality.

"(3) Is a menace to the public health or to patients or others by reason of a disease.

"(4) Is an habitual user of intoxicants or drugs rendering him or her unfit for the practice of dentistry or dental hygiene.

"(5) Has been convicted for violation of federal or state narcotics or barbiturate laws.

"(6) Is guilty of negligence or gross negligence, ~~as defined by the board, in the practice of dentistry or dental hygiene.~~

"a. For the purposes of this subdivision, negligence is defined as the failure to do what a reasonably prudent dentist or dental hygienist would have done under the same or

1 similar circumstances or the doing of that which a reasonably
2 prudent practitioner would not have done under the same or
3 similar circumstances.

4 "b. For the purposes of this subdivision, gross
5 negligence is defined as willful or wanton conduct with
6 reckless, malicious, or conscious disregard for the rights or
7 safety of others, or conduct that is so deliberate,
8 outrageous, and callous as to display total indifference to
9 the health or safety of a patient, that could result in
10 serious bodily injury or death.

11 "(7) Is guilty of employing, allowing, or permitting
12 any unlicensed person or persons to perform any work in his or
13 her office which, under this chapter, can only be legally done
14 by a person or persons holding a license to practice dentistry
15 or dental hygiene.

16 "(8) Willfully or negligently violates the rules of
17 the State Department of Health or of the board regarding
18 sanitation.

19 "(9) Is guilty of division of fees, or agreeing to
20 split or divide the fee received for dental service with any
21 person for bringing or referring a patient without the
22 knowledge of the patient or his or her legal representative,
23 except the division of fees between dentists practicing in a
24 partnership and sharing professional fees, or in case of one
25 licensed dentist employing another.

1 "(10) Is guilty of professional connection or
2 association with or lending his or her name to anyone who is
3 engaged in the illegal practice of dentistry or dental
4 hygiene.

5 "(11) Conviction in any court of competent
6 jurisdiction of a felony or a misdemeanor involving moral
7 turpitude.

8 "(12)a. A dental hygienist using or attempting to
9 use in any manner whatsoever any prophylactic list, call list,
10 records, reprints, or copies of same, or information gathered
11 therefrom, of the names of patients whom the dental hygienist
12 served in the office of a prior employer, unless the names
13 appear upon the bona fide call or prophylactic list of his or
14 her present employer and were caused to appear through the
15 legitimate practice of dentistry or dental hygiene as provided
16 for in this chapter.

17 "b. A licensed dentist who aids or abets or
18 encourages a dental hygienist employed by him or her to make
19 use of a ~~so-called~~ prophylactic list or the calling by
20 telephone or by the use of letters transmitted through the
21 mails to solicit patronage from patients formerly served in
22 the office of any dentist employing the hygienist or nurse.

23 "(13) Pertaining to licensed dentists only, the
24 prescribing, administering or dispensing of any controlled
25 substances enumerated in Schedules I through V contained in

1 the Alabama Uniform Controlled Substances Act, Chapter 2 of
2 Title 20, or any amendment or successor thereto, or any drug
3 not prescribed for any dentally or facially related condition,
4 and/or for any necessary medication during the course of
5 treatment rendered directly by the dentist, for any person not
6 under his or her treatment in the regular practice of his or
7 her profession, ~~or veteran's administration.~~

8 "(14) Irregularities in billing an insurance company
9 or other third party payer for services rendered to a patient.
10 For the purposes of this section irregularities in billing
11 shall include: Reporting charges for the purpose of obtaining
12 a total payment in excess of that usually received by the
13 dentist for the services rendered; falsely reporting treatment
14 dates for the purpose of obtaining payment; falsely reporting
15 charges for services not rendered; falsely reporting services
16 rendered for the purpose of obtaining payment; or failing to
17 advise any third party payer that the copayment provisions of
18 a contract have been abrogated by accepting the payment
19 received from the third party payer as full payment.

20 "(15) Violating any rule ~~or regulation~~ adopted by
21 the ~~Board of Dental Examiners~~ board.

22 "(16) Has had his or her license to practice
23 dentistry or dental hygiene from another state suspended or
24 revoked based upon acts similar to those described in this
25 section. A certified copy of the record of suspension or

1 revocation of the state making the suspension or revocation
2 shall be conclusive evidence thereof.

3 "(17) Violating any provision of this chapter.

4 "(b) When the board finds any dentist or dental
5 hygienist guilty of any of the grounds set forth in subsection
6 (a), it may enter an order imposing one or more of the
7 following penalties:

8 "(1) Refuse to issue the dentist or dental hygienist
9 license or ~~license certificate~~ permit provided for in this
10 chapter.

11 "(2) ~~Revoke~~ With the exception of negligence as
12 defined in paragraph (a) (6)a. revoke the license or permit of
13 any dentist or dental hygienist.

14 "(3) Suspend the license or permit of any dentist or
15 dental hygienist.

16 "(4) Enter a censure.

17 "(5) Issue an order fixing a period and terms of
18 probation best adapted to protect the public health and safety
19 and to rehabilitate the dentist or dental hygienist.

20 "(6) ~~Imposition of~~ Impose an administrative fine not
21 to exceed ~~one thousand two hundred fifty dollars (\$1,250)~~ five
22 thousand dollars (\$5,000) for each count or separate offense.

23 "(7) ~~Imposition of~~ Impose restrictions on the scope
24 of practice.

1 "(8) ~~Imposition of~~ Impose peer review or
2 professional education requirements.

3 "(9) ~~Assessment of~~ Assess the costs of the
4 disciplinary proceedings.

5 "(c) Failure to comply with any final order of the
6 board, including, but not limited to, an order of censure or
7 probation, is cause for suspension or revocation of a license.

8 "(d) No disciplinary action as outlined in
9 subsection (b) or (c) hereof shall be invoked or entered
10 except after hearing by the board as provided in this chapter,
11 and such order is subject to judicial review as provided by
12 this chapter.

13 "No order of suspension or revocation provided in
14 this section shall be made or entered except after hearing by
15 the board as provided in this chapter, and the order shall be
16 subject to judicial review as provided by this chapter.

17 "(e) The board may temporarily suspend a special
18 purpose license to practice dentistry across state lines
19 without a hearing on either of the following grounds:

20 "(1) The failure of the licensee to appear or
21 produce records or materials as requested by the board.

22 "(2) The initiation of a disciplinary action against
23 the licensee by any state or territorial licensing
24 jurisdiction in which the licensee holds a license to practice
25 dentistry.

1 "Notwithstanding any other provision of law,
2 including the Alabama Administrative Procedure Act, the
3 temporary suspension provided herein shall remain in effect
4 until either the licensee has complied with the request of the
5 board or the disciplinary action pending against the licensee
6 has been terminated in favor of the licensee and the temporary
7 suspension has been terminated by a written order of the
8 board. A special purpose license to practice dentistry across
9 state lines is subject to each of the grounds for disciplinary
10 action provided in this section in accordance with the
11 procedures of Section 34-9-24 and the Alabama Administrative
12 Procedure Act.

13 "(f) Members of the ~~Board of Dental Examiners~~ board,
14 any agent, employee, consultant, or attorney for the board,
15 and the members of any committee of dentists or dental
16 hygienists impaneled by the board, shall be immune from suits
17 for any conduct in the course of their official duties with
18 respect to investigations or hearings; provided, that the
19 persons act without malice and in good faith that such
20 investigations or hearings are warranted by the facts, known
21 to them after diligent effort to obtain the facts of the
22 matter relative to the investigations or hearings.

23 "(g) Nothing in this chapter shall be interpreted to
24 limit or restrict the authority of the board to discipline any
25 dentist licensed to practice in this state who violates this

1 chapter while engaging in the practice of dentistry within
2 this or any other state.

3 "(h) The board shall have the authority to adopt
4 rules imposing a non-disciplinary administrative penalty for
5 designated violations of ~~the Alabama Dental Practice Act this~~
6 chapter.

7 "§34-9-20.

8 "Any person, which word when used in this section
9 shall include all legal entities not licensed to practice
10 dentistry in this state, who shall advertise in any manner to
11 the general public that he or she can or will sell, supply,
12 furnish, construct, reproduce, or repair ~~prosthetic dentures,~~
13 ~~bridges, plates~~ protheses (fixed or removable), or other
14 appliances to be used or worn as substitutes for natural
15 teeth, or for the regulation thereof, shall be guilty of a
16 misdemeanor, and the circuit courts shall have jurisdiction to
17 enjoin such person from so doing.

18 "§34-9-21.

19 "(a) Every duly licensed and registered dentist who
20 employs the services of a commercial dental laboratory or
21 private technician for the purpose of constructing, altering,
22 repairing, or duplicating any ~~denture, plate, crown, partial~~
23 ~~plate, bridge~~ protheses (fixed or removable), splint, or
24 orthodontic, ~~or prosthetic~~ appliance shall be required to
25 furnish the commercial dental laboratory or private technician

1 an impression or ~~model taken~~ cast made by the dentist when
2 necessary, together with a prescription setting forth the
3 following:

4 "(1) The name and address of the commercial dental
5 laboratory or private dental technician;~~;~~_

6 "(2) The patient's name or identification number,
7 and if a number is used the patient's name shall be written
8 upon the duplicate copy of the prescription retained by the
9 dentist;~~;~~_

10 "(3) The date on which the prescription was
11 written;~~;~~_

12 "(4) A description of the work to be done, with
13 diagram if necessary;~~;~~_

14 "(5) A specification of the type and quality of
15 materials to be used;~~and.~~_

16 "(6) The signature of the dentist and his or her
17 license number.

18 "(b) Such prescription shall be made in duplicate
19 form. The duplicate copy shall be retained in a permanent file
20 for a period of two years by the dentist, and the original
21 copy shall be retained on a permanent file for a period of two
22 years by the commercial dental laboratory or private
23 technician. Such permanent file of prescriptions to be kept by
24 such dentists, commercial dental laboratory, or private
25 technician shall be open to inspection at any reasonable time

1 by the board or its duly constituted agent. Failure of the
2 dentist, commercial dental laboratory, or private technician
3 to keep such permanent records of prescriptions which are
4 identifiable with each ~~denture, plate, partial plate, bridge~~
5 protheses (fixed or removable), splint, or orthodontic, ~~or~~
6 ~~prosthetic~~ appliance shall be prima facie evidence of a
7 violation of this chapter and shall constitute and be
8 punishable as a misdemeanor.

9 "§34-9-22.

10 "Whoever sells or offers to sell a diploma
11 conferring a dental or dental hygiene degree, or a license
12 certificate or annual registration certificate granted
13 pursuant to this chapter or prior dental act, or procures such
14 diploma or license certificate or annual registration
15 certificate with intent that it shall be used as evidence of
16 the right to practice dentistry or dental hygiene as defined
17 by law, by a person other than the one upon whom it was
18 conferred or to whom such license certificate or annual
19 registration certificate was granted, or with fraudulent
20 intent alters such diploma or license certificate or annual
21 registration certificate, or uses or attempts to use it when
22 it is so altered shall be deemed guilty of a misdemeanor. The
23 board may impose any of the penalties outlined in Section
24 34-9-18 against any person found guilty of making a false
25 statement or cheating, or of fraud or deception either in

1 applying for a license, a license certificate, or annual
2 registration or in taking any of the examinations provided for
3 herein.

4 "§34-9-24.

5 "No action to revoke or suspend a license or permit
6 shall be taken until the licensee or permittee has been
7 furnished a statement in writing of the charges against him or
8 her, together with a notice of the time and place of the
9 hearing. The statement of charges and notice shall be served
10 upon the licensee or permittee at least 20 days before the
11 date fixed for hearing, either personally or by registered or
12 certified mail sent to his or her last known physical home or
13 office address or post-office address, or any combination of
14 them.

15 "§34-9-26.

16 "No person shall practice as a dental hygienist in
17 this state until such person has passed an examination given
18 by the board or approved by the board, or both, under rules
19 and regulations as the board may promulgate and the payment of
20 a fee. The board shall issue licenses and license certificates
21 as dental hygienists to those persons who have passed the
22 examination and have been found qualified by the board. The
23 license certificate and annual registration certificate shall
24 be displayed in the office in which the dental hygienist is
25 employed. No person shall be entitled to a license and license

1 certificate unless the person is 19 years of age and of good
2 moral character. Each applicant for examination and license as
3 a dental hygienist shall be a graduate of a school of dental
4 hygiene which has been approved by the board, or in lieu
5 thereof, shall have served as a dental assistant for a period
6 of time established by board rule and shall have served at
7 least one year as a dental hygienist trainee under a training
8 permit issued by the board to a qualified dentist practicing
9 in this state in accordance with the dental hygienist training
10 program established by the Board of Dental Examiners of
11 Alabama. Any person practicing in violation of this section
12 shall be guilty of a misdemeanor, and the board may impose the
13 penalties outlined in Section 34-9-18 for such violation.

14 "§34-9-27.

15 "A dental hygienist shall work only under the direct
16 supervision of a duly licensed dentist practicing in this
17 state. Dental hygienists may ~~take~~ make, develop, and mount
18 oral ~~X-rays~~ radiographs; remove calcareous deposits,
19 accretions, or stains from the teeth, perform any intra-oral
20 procedures allowed by rule or regulation of the Board of
21 Dental Examiners of Alabama and assist a licensed or permitted
22 dentist in his or her practice. Any person licensed by the
23 board under this section who has completed the curriculum for
24 dental hygienists at a dental school approved by the board
25 shall have the right to use the title registered dental

1 hygienist or the ~~abbreviations~~ abbreviation thereof, "R.D.H."
2 appended to his or her name signifying the license conferred.
3 The board may impose any of the penalties outlined in Section
4 34-9-18 against any dentist who shall permit any dental
5 hygienist working under his or her supervision to perform any
6 operation other than those permitted under the provisions of
7 this section, and may impose the penalties outlined in Section
8 34-9-18 against any dental hygienist who shall perform any
9 operation other than those permitted under this section.

10 "§34-9-28.

11 "It shall be the duty of all licensed dental
12 hygienists to notify the ~~secretary-treasurer of the board,~~ in
13 writing, of any change of address or employer and have issued
14 to them an annual registration certificate by the board. Any
15 dental hygienist whose license shall be automatically
16 suspended by reason of failure, neglect, or refusal to secure
17 the annual registration certificate may be reinstated by the
18 board upon payment of the penalty fee plus the current year's
19 registration fee. The form and method provided for in Section
20 34-9-15 shall apply to the annual registration of dental
21 hygienists.

22 "§34-9-40.

23 "(a) In order to accomplish the purposes and to
24 provide for the enforcement of this chapter, there is hereby
25 created the Board of Dental Examiners of Alabama. The board is

1 hereby vested with the authority to carry out the purposes and
2 enforce the provisions of this chapter. On June 24, 1959, the
3 members of the present board now in existence shall hold
4 office for the remainder of their respective terms for which
5 they have been elected and thereafter until their successors
6 are elected and qualified and shall constitute the board under
7 this chapter. The board shall consist of six dentists who
8 shall be selected in the method set forth herein all of whom
9 having been actively engaged in the practice of dentistry in
10 the State of Alabama for at least five years next preceding
11 the date of their election and one dental hygienist elected
12 at-large as provided in subsection (b). Each member of the
13 board shall be a citizen of this state. No member of the board
14 shall be a member of the faculty of any dental school, dental
15 college, dental hygiene school, or dental hygiene college or
16 receive any financial benefits for teaching in any dental
17 school, dental college, dental hygiene school, or dental
18 hygiene college or have a financial interest in a commercial
19 dental laboratory or a dental supply business. ~~Beginning in~~
20 ~~October 2009, and every five years thereafter, one~~ One member,
21 who is qualified as provided herein, shall be selected by the
22 Alabama Dental Society ~~no later than July 1, 2009, and every~~
23 ~~five years thereafter.~~ As for all elections of members, any
24 group of 10 or more licensed dentists, residing and practicing
25 dentistry in the state, may nominate a candidate for the

1 position of board member by submitting a petition bearing
2 their signatures to the secretary of the board to be
3 postmarked ~~not~~ no later than the first day of July in the year
4 of the election. The board shall cause the election ballots to
5 be mailed or published digitally not later than September 1 in
6 the year of the election to all the licensed dentists residing
7 and practicing in the state and currently registered as
8 prescribed by law, along with the annual registration form for
9 the forthcoming fiscal year. Both the annual registration form
10 and fee must accompany the ~~separately sealed~~ ballot that shall
11 be postmarked, or otherwise submitted electronically, no later
12 than October 1 ~~and returned~~ to the secretary of the board no
13 later than the first board workday following October 1 each
14 year, ballots being nullified unless accompanied by or
15 electronically filed with completed annual registration form
16 and annual registration fee. Three members of the board shall
17 be present at the ~~canvassing of time~~ the ballots, digital or
18 physical, are tallied. Any candidate receiving a majority of
19 the votes shall be declared elected to the board and will take
20 the oath of office on or before October 15 in the year of his
21 or her election. In the event no candidate receives a majority
22 of the votes cast, the board shall conduct a run-off election
23 between the two candidates receiving the largest number of
24 votes. The board shall cause the ballots pertaining to the
25 run-off election to be mailed or digitally published on or

1 before October ~~15~~ 31 of the election year to all the licensed
2 dentists residing and practicing in the state and currently
3 registered as prescribed by law, and the ballots pertaining to
4 the run-off election shall be postmarked or digitally
5 published no later than the ~~first~~ fourteenth day of November
6 in the year of the run-off election and received, if mailed,
7 by the secretary of the board no later than the first board
8 workday following the ~~first~~ fourteenth day of November. All
9 mailed ballots received after this date shall be nullified. In
10 the event of a run-off election, the candidate receiving the
11 largest number of votes in the run-off election shall be
12 declared elected to the board and shall ~~immediately~~ take the
13 oath of office and begin his or her term of office no later
14 than the next scheduled board meeting. Every member elected
15 shall hold office for a period of five years, which terms
16 shall begin immediately upon taking an oath to properly and
17 faithfully discharge the duties of his or her office and until
18 his or her successor is elected and qualified, and the member
19 so elected shall not at the expiration of the term be eligible
20 to succeed himself or herself. The membership of the board
21 shall be inclusive and reflect the racial, gender, geographic,
22 urban/rural, and economic diversity of the state. Except for
23 the board member position selected by the Alabama Dental
24 Society, vacancies on the board shall be filled by the board
25 by the appointment of the immediate past member of the board,

1 and if for any reason the immediate past member of the board
2 is unable to accept the appointment, then the board shall fill
3 the vacancy by appointment of the most recent past board
4 member who is willing to accept the appointment. If no past
5 board member accepts the appointment, then the board may, by
6 ~~unanimous~~ majority vote, appoint any licensed dentist
7 qualified under the provisions of this chapter. In the event
8 of a vacancy in the position selected by the Alabama Dental
9 Society, the Alabama Dental Society shall select a dentist who
10 is qualified as provided herein to fill the vacancy. Members
11 of the board shall be removed by a two-thirds vote of the
12 registered dentists in the state for neglect of duty or any
13 just cause, by petition to the secretary of the board by 10
14 percent of the licensed dentists in the state. On or before
15 July 1, 1962, the board shall send a copy of this section to
16 all licensed dentists in the state.

17 " (b) (1) One member of the board shall be a licensed
18 dental hygienist. The dental hygienist member shall be of good
19 moral and ethical character and shall have been actively
20 engaged in the practice of dental hygiene in the State of
21 Alabama for at least five years preceding the date of
22 election. No dental hygienist member shall be a member of the
23 faculty of any dental school, dental college, dental hygiene
24 school, or dental hygiene college or receive any financial
25 benefits for teaching in any dental school, dental college,

1 dental hygiene school, or dental hygiene college or have a
2 financial interest in a commercial dental laboratory or dental
3 supply business while serving on the board.

4 "(2) The dental hygienist member shall be elected as
5 follows:

6 "a. Any group of 10 or more licensed dental
7 hygienists, residing and practicing dental hygiene in the
8 State of Alabama, may nominate a candidate for the dental
9 hygienist position by submitting a petition bearing their
10 signatures to the secretary of the board no later than the
11 first day of July in the year of an election. The board shall
12 cause election ballots to be mailed or published digitally no
13 later than September 1 in the year of an election to all the
14 licensed dental hygienists residing and practicing in the
15 state and currently registered as prescribed by law. Both the
16 annual registration form and the registration fee must
17 accompany ~~a separately sealed~~ the ballot that shall be
18 postmarked or otherwise submitted electronically no later than
19 October 1 ~~and returned~~ to the secretary of the board no later
20 than the first board workday following October 1 each year,
21 and the ballots will be nullified unless ~~the voter has~~
22 ~~complied with Section 34-9-28, concerning annual registration~~
23 accompanied by or electronically filed with a completed annual
24 registration form and the annual registration fee.

1 "b. Three members of the board shall be present at
2 the ~~canvassing of time~~ the ballots, digital or physical, are
3 tallied. Any candidate receiving a majority of the votes shall
4 be ~~the dental hygienist member~~ declared elected to the board
5 and shall take the oath of office on or before October 15 in
6 the year of his or her election. In the event no candidate
7 receives a majority of the votes cast, the board shall conduct
8 a run-off election between the two candidates receiving the
9 largest number of votes. The board shall cause the ballots
10 pertaining to any run-off election to be mailed or digitally
11 published on or before October ~~15~~ 31 of the election year to
12 all licensed dental hygienists residing and practicing in the
13 state and currently registered as prescribed by law, and the
14 ballots pertaining to the run-off election shall be postmarked
15 or digitally submitted no later than the fourteenth day of
16 November ~~1~~ in the year of the run-off election and received,
17 if mailed, by the secretary of the board no later than the
18 first board workday following November ~~1-14~~ 14. ~~Ballots All~~
19 mailed ballots received after November ~~1-14~~ 14 shall be
20 nullified. In the event of a run-off election, the dental
21 hygienist candidate receiving the largest number of votes in
22 the run-off election shall be declared elected to the board
23 and shall ~~immediately~~ take the oath of office and begin his or
24 her term of office no later than the next scheduled board
25 meeting.

1 "c. All elections as described above shall be
2 conducted by the board.

3 "(3) The dental hygienist member shall be removed by
4 a two-thirds vote of the registered dental hygienists in the
5 state for neglect of duty or any just cause by petition to the
6 secretary of the board by 10 percent of the licensed dental
7 hygienists in the state.

8 "(4) The dental hygienist member shall hold that
9 position for a period of five years, which term shall begin
10 immediately upon taking an oath to properly and faithfully
11 discharge the duties of his or her office and continue until
12 his or her successor is elected and qualified, and the member
13 so elected shall not at the expiration of the term be eligible
14 to succeed himself or herself. If a vacancy occurs in the
15 position of dental hygienist, the unexpired term shall be
16 filled by the board by the appointment of the immediate past
17 dental hygienist member. If for any reason the immediate past
18 dental hygienist member is unable to accept the appointment,
19 then the board shall fill the vacancy by a ~~unanimous~~ majority
20 vote of the other board members by the appointment of some
21 other past dental hygienist member. If a vacancy occurs and
22 there is not an immediate past dental hygienist member or
23 other past dental hygienist member, the vacancy shall be
24 filled by a unanimous vote of the board by the appointment of
25 some otherwise qualified dental hygienist.

1 "(5) The dental hygienist member shall advise the
2 board on matters relating to dental hygiene and shall only be
3 permitted to vote on matters relating to dental hygiene. The
4 board shall provide the dental hygienist member with timely
5 notice of all board meetings and the dental hygienist member
6 shall be allowed to attend all meetings unless prohibited by
7 law from attendance at any disciplinary hearings. The board
8 shall not adopt any rule relating to the practice of dental
9 hygiene unless the proposed rule has been submitted to the
10 dental hygienist member for review and comment at least 30
11 days prior to its adoption. The dental hygienist member shall
12 be entitled to the same compensation and expenses paid to
13 dentist members of the board pursuant to Section 34-9-41.

14 "(c) Any dentist or dental hygienist who has been
15 found guilty of violating this chapter or any provision of a
16 dental practice act of any other state and as a result his or
17 her license was revoked, suspended, or placed on probation or
18 who has been convicted of a felony, shall not be eligible for
19 election or membership on the board for a period of five years
20 from the termination of any such revocation, suspension, or
21 probation.

22 "§34-9-41.

23 "The board shall annually elect from its membership
24 a president, vice-president, and secretary-treasurer and may
25 employ ~~a secretary~~ staff members who ~~is~~ are not a ~~member~~

1 ~~members~~ of the board, ~~and it shall not be necessary that the~~
2 ~~secretary be a dentist.~~ The board shall have a common seal.
3 The board shall hold an annual meeting in Birmingham at the
4 University of Alabama School of Dentistry as soon as practical
5 after the graduation exercises of the dental school for the
6 purpose of examining or participating in the regional
7 examination of applicants for a license to practice dentistry
8 and dental hygiene or at such other times and places as the
9 board may designate for the purpose of transacting its
10 business and examinations. A majority of the board shall
11 constitute a quorum for the transaction of business at any
12 meeting except that in conducting hearings involving any of
13 the penalties outlined in Section 34-9-18, no less than five
14 members of the board shall be present. In conducting hearings
15 involving any of the penalties outlined in Section 34-9-18, a
16 majority of the board may appoint any former member of the
17 board who for such purposes shall have all the powers and
18 privileges of such office as a regular board member possesses.
19 In conducting or participating in exams, a majority of the
20 board may appoint any former member of the board or such other
21 licensed practicing dentists from a jurisdiction recognized by
22 the board who for such purposes shall have all the powers and
23 privileges of such office as a regular board member possesses.
24 Out of the funds of the board the members thereof shall
25 receive as compensation a sum to be fixed by the board for

1 each day actively engaged in the duties of their office, and
2 in addition board members shall receive the same per diem and
3 travel allowance as is paid by law to state employees for each
4 day actively engaged in the duties of their office. The
5 secretary-treasurer shall receive such compensation as may be
6 fixed by the board, which shall be in addition to his or her
7 per diem and expenses, provided no per diem or expenses shall
8 be allowed unless his or her duties require his or her absence
9 from his or her office. The secretary shall receive such
10 compensation as may be fixed by the board. The
11 secretary-treasurer shall be custodian of all property, money,
12 records and the official seal of the board. All money received
13 by the board under this chapter shall be paid to and received
14 by the secretary-treasurer of the board. The
15 secretary-treasurer shall deposit to the credit of the board
16 all funds paid to the board in a bank selected by its members.
17 The board is authorized to expend such funds as shall be
18 necessary to enforce the provisions of this chapter; to pay
19 salaries, expenses and other costs herein provided; to promote
20 the arts and science of dentistry; and for such other purposes
21 as the board shall consider to be in the best interest of
22 dentistry in this state. All the costs herein provided for
23 shall be paid by checks drawn by the secretary-treasurer and
24 countersigned by the president of the board; except the board
25 may authorize the administrative secretary or the executive

1 director to sign checks for costs that do not exceed a
2 monetary limit to be set by the board in its rules. Should the
3 property be other than money, the secretary-treasurer shall
4 provide for the safekeeping thereof for the use of the board.
5 All money, including license fees, annual renewal license
6 certificate fees, examination fees and any and all other fees
7 and receipts under the provisions of this chapter, are hereby
8 appropriated to the Board of Dental Examiners to be used as
9 herein provided.

10 "§34-9-43.

11 "(a) The board shall exercise, subject to this
12 chapter, the following powers and duties:

13 "(1) Adopt rules for its government as deemed
14 necessary and proper.

15 "(2) Prescribe rules for qualification and licensing
16 of dentists and dental hygienists.

17 "(3) Conduct or participate in examinations to
18 ascertain the qualification and fitness of applicants for
19 licenses as dentists and dental hygienists.

20 "(4) Make rules and regulations regarding
21 sanitation.

22 "(5) Formulate rules and regulations by which dental
23 schools and colleges are approved, and formulate rules and
24 regulations by which training, educational, technical,
25 vocational, or any other institution which provides

1 instruction for dental assistants, dental laboratory
2 technicians, or any other paradental personnel are approved.

3 "(6) Grant licenses, issue license certificates,
4 teaching permits, and annual registration certificates in
5 conformity with this chapter to such qualified dentists and
6 dental hygienists.

7 "(7) Conduct hearings or proceedings to impose the
8 penalties specified in Section 34-9-18.

9 "(8)a. Employ necessary persons to assist in
10 performing its duties in the administration and enforcement of
11 this chapter, and to provide offices, furniture, fixtures,
12 supplies, printing, or secretarial service to these persons
13 and expend necessary funds.

14 "b. Employ an attorney or attorneys, subject to the
15 approval of the Attorney General, to advise and assist in the
16 carrying out and enforcing of the provisions of this chapter.
17 Provided, however, if the board contracts with an outside
18 attorney to be general counsel to the board, that attorney or
19 any member of a law firm with which he or she is associated
20 shall not function as the board's prosecutor at disciplinary
21 hearings.

22 "(9)a. Investigate alleged violations of this
23 chapter and institute or have instituted before the board or
24 the proper court appropriate proceedings regarding the
25 violation.

1 "b. Authorize and employ investigators who comply
2 with the Peace Officers' Minimum Standards and Training Act to
3 exercise the powers of a peace officer in investigating
4 alleged violations of the drug or controlled substances laws
5 by persons licensed pursuant to this chapter, including the
6 powers of arrest and inspection of documents. ~~These~~
7 ~~investigators shall not be paid a subsistence allowance by the~~
8 ~~board.~~

9 "(10) Adopt rules and regulations to implement this
10 chapter.

11 "(11) Publish, on a quarterly basis, all minutes,
12 except minutes of executive sessions, financial reports,
13 schedules of meetings, including anticipated executive
14 sessions, and other pertinent information on the board's
15 website no later than 90 days following the date of
16 occurrence. In addition, publish or post annually the rules
17 and regulations promulgated by the board, a copy of the Dental
18 Practice Act, and a list of all persons licensed to practice
19 under this chapter.

20 "(12) Attend meetings, seminars, ~~work shops~~
21 workshops, or events that may improve the function and
22 efficiency of the board or improve the ability of the board to
23 enforce and administer this chapter.

24 "(b) The board, in exercising its powers and duties,
25 shall adhere to guidelines and proceedings of the State Ethics

1 Commission as provided in Chapter 25 of Title 36. The board
2 may adopt rules for the purpose of establishing additional
3 ethical guidelines.

4 "§34-9-44.

5 "The secretary-treasurer of the board shall keep a
6 registry in which shall be entered the names of all persons to
7 whom license certificates have been granted under this
8 chapter, the numbers of such license certificates, the dates
9 of granting the same and other matters of records, and he or
10 she shall keep a true and correct copy of the minutes of all
11 board meetings, and the book so provided and kept shall be the
12 official book of records. A ~~photostatic~~ copy of the records or
13 a copy of the records certified by the secretary-treasurer and
14 under the seal of the board shall be admitted in any of the
15 courts of this state as prima facie evidence of the facts
16 contained in the records and in lieu of the original thereof.
17 A certificate under the hand of the secretary-treasurer and
18 the seal of the board that there is not entered in such record
19 books the name and number of and date of granting such license
20 certificate to a person charged with a violation of any of the
21 provisions of this chapter shall be prima facie evidence of
22 the facts contained therein. Such certificates shall be
23 admitted in any of the courts of this state in lieu of the
24 records of the board. The original books, records, and papers
25 of the board shall be kept at the office of the

1 secretary-treasurer of the board, which office shall be at
2 such place as may be designated by the board.

3 "§34-9-60.

4 "Any person licensed or permitted to practice
5 dentistry in the State of Alabama shall be authorized to use
6 anesthesia in accordance with the provisions of this section.

7 "(1) All dentists are authorized to use local
8 anesthesia.

9 "(2) Twelve months after May 29, 1985, no dentist
10 shall use general anesthesia on an outpatient basis for dental
11 patients, unless such dentist possesses a permit of
12 authorization issued by the Board of Dental Examiners.

13 "a. In order to receive such permit, the dentist
14 must apply on a prescribed application form to the Board of
15 Dental Examiners, submit an application fee, and produce
16 evidence showing that he or she:

17 "1. Has completed a minimum of one year of advanced
18 training in anesthesiology and related academic subjects (or
19 its equivalent) beyond the undergraduate dental school level
20 in a training program as described in Part II of the
21 guidelines for teaching the comprehensive control of pain and
22 anxiety in dentistry; or

23 "2. Is a diplomate of the American Board of Oral and
24 Maxillofacial Surgery, or is eligible for examination by the
25 American Board of Oral and Maxillofacial Surgery, or is a

1 member of the American Association of Oral and Maxillofacial
2 Surgeons; or

3 "3. Employs or works in conjunction with a qualified
4 medical doctor who is a member of the anesthesiology staff in
5 an accredited hospital, provided that such anesthesiologist
6 must remain on the premises of the dental facility until any
7 patient given a general anesthetic regains consciousness and
8 is discharged; and

9 "4. Has a properly equipped facility for the
10 administration of general anesthesia staffed with a supervised
11 team of auxiliary personnel capable of reasonably assisting
12 the dentist with procedures, problems, and emergencies
13 incident thereto. Adequacy of the facility and competence of
14 the anesthesia team shall be determined by the Board of Dental
15 Examiners as outlined below.

16 "5. Possesses current training in Advanced Cardiac
17 Life Support (ACLS) and basic life support certification.

18 "b. Prior to the issuance of such permit, the Board
19 of Dental Examiners, at its discretion, may require an on-site
20 inspection of the facility, equipment, and personnel to
21 determine if, in fact, the aforementioned requirements have
22 been met. This evaluation shall be carried out in a manner
23 prescribed by the board. The evaluation shall be conducted by
24 a team of three examiners appointed by the Board of Dental
25 Examiners. These examiners shall be dentists who are

1 authorized to administer general anesthesia. If the results of
2 the initial evaluation are deemed unsatisfactory, ~~upon written~~
3 ~~request of the applicant, a second evaluation shall be~~
4 ~~conducted by a different team of examiners~~ the applicant may
5 reapply for a permit subject to the correction of the
6 deficiencies outlined in the original evaluation.

7 "(3) Each dentist who is licensed to practice
8 dentistry in the state on May 29, 1985, who desires to
9 continue to use general anesthesia shall make application on
10 the prescribed form to the Board of Dental Examiners within 12
11 months of May 29, 1985. If he or she meets the requirements of
12 this section, he or she shall be issued such a permit. If the
13 applicant does not meet the requirements of paragraph a. of
14 subdivision (2) of this section, he or she may be entitled to
15 a "general anesthesia permit" provided said applicant passes
16 to the satisfaction of the board an on-site inspection as
17 provided for in paragraph b. of subdivision (2) of this
18 section.

19 "(4) Each dentist who has not been using general
20 anesthesia prior to May 29, 1985, may be granted by the board
21 a temporary provisional permit based on the applicant's
22 producing evidence that he or she has complied with paragraph
23 a. of subdivision (2) of this section above pending complete
24 processing of the application and thorough investigation of an

1 on-site evaluation as described in paragraph b. of subdivision
2 (2) of this section.

3 "§34-9-63.

4 "The issuance of a permit for general anesthesia
5 shall include the privilege of administering parenteral
6 sedation in accordance with this section. The issuance of a
7 permit for parenteral sedation shall include the privilege of
8 administering intravenous sedation. All current intravenous
9 sedation permit holders are entitled to a parenteral sedation
10 permit subject to the renewal and regulatory provisions
11 afforded to the Board of Dental Examiners by this chapter. The
12 term parenteral sedation shall not include the use or
13 regulation of nitrous oxide.

14 "(1) ~~After August 1, 1993, no~~ No dentist shall use
15 parenteral sedation on an outpatient basis for dental patients
16 unless the dentist possesses a permit of authorization issued
17 by the board. The dentist applying for or holding the permit
18 shall be subject to on-site inspections as provided in
19 paragraph b. of subdivision (2) of Section 34-9-60.

20 "a. In order to receive the permit, the dentist
21 shall:

22 "1. Apply on a prescribed application form to the
23 board.

24 "2. Submit a fee.

1 "3. Produce evidence showing that he or she has
2 satisfied each of the following requirements:

3 "(i) Received formal training in the use of
4 parenteral sedation from a board approved training program, is
5 competent to handle all emergencies relating to parenteral
6 sedation, and is currently certified in cardiopulmonary
7 resuscitation. The certification of the formal training shall
8 specify the total number of hours, the number of didactic
9 hours, and the number of patient contact hours. The required
10 number of didactic hours and patient contact hours shall be
11 determined by the board.

12 "(ii) Equipped a proper facility for the
13 administration of parenteral sedation, staffed with a
14 supervised team of auxiliary personnel capable of reasonably
15 assisting the dentist with procedures, problems, and
16 emergencies incident to the sedation procedure.

17 "b. Adequacy of the facility and the competency of
18 the sedation team shall be determined by the board.

19 "c. Prior to the issuance of a permit, the board may
20 require an on-site inspection of the facility, equipment, and
21 personnel to determine if the requirements of this section
22 have been met. This evaluation shall be performed as provided
23 in subdivision (2) of this section.

24 "(2) Each dentist who is licensed to practice
25 dentistry in the state ~~on or after August 1, 1993,~~ who desires

1 to continue to use parenteral sedation shall make application
2 on the prescribed form to the board ~~within 12 months of August~~
3 ~~1, 1993~~. If he or she meets the requirements of this section,
4 or currently holds a valid intravenous sedation permit, he or
5 she shall be issued such a permit subject to all renewal and
6 regulatory requirements of Section 34-9-64. If the applicant
7 does not meet the requirements of paragraph a. of subdivision
8 (1) of this section, or does not currently hold a valid
9 intravenous sedation permit, he or she may be entitled to a
10 "parenteral sedation permit" if the applicant passes, to the
11 satisfaction of the board, an on-site inspection. The
12 inspection shall ascertain that the dentist has a properly
13 equipped facility for the administration of parenteral
14 sedation, staffed with a supervised team of auxiliary
15 personnel capable of reasonably assisting the dentist with
16 incidental procedures, problems, and emergencies.

17 "The board, in conducting the on-site inspection and
18 evaluations required in this section, shall appoint a team of
19 up to three examiners who shall be dentists certified to
20 administer parenteral sedation in accordance with this
21 article.

22 "(3) A dentist utilizing parenteral sedation and the
23 auxiliary personnel of the dentist shall be currently
24 certified in cardiopulmonary resuscitation and the dentist
25 shall be trained in advanced cardiac life support.

1 "(4) Each dentist who has not been using parenteral
2 sedation ~~prior to August 1, 1993, may,~~ pending complete
3 processing of an application and a thorough on-site
4 evaluation, may be granted a one temporary provisional permit
5 by the board at a time, if the applicant produces evidence
6 that he or she has complied with this section.

7 "§34-9-82.

8 "(a) A dentist using oral conscious sedation must
9 comply with all of the following requirements:

10 "(1) Patients to be treated under oral conscious
11 sedation must be suitably evaluated prior to the start of any
12 sedation procedure. Using the American Society of
13 Anesthesiologists Patient Physical Status classifications the
14 dentist should determine that the patient is an appropriate
15 candidate for oral conscious sedation.

16 "(2) The patient or guardian must be advised
17 regarding the procedure associated with the delivery of any
18 sedative agents and the appropriate written informed consent
19 should be obtained.

20 "(3) Inhalation equipment used in conjunction with
21 oral conscious sedation must be evaluated prior to use on each
22 patient. Determination of adequate oxygen supply must be
23 completed prior to use with each patient.

1 "(4) Appropriate verbal or written preoperative and
2 postoperative instructions must be given to the patient or
3 guardian.

4 "(5) Baseline vital signs should be obtained unless
5 the patient's behavior prohibits such determination.

6 "(6) Pretreatment physical evaluation should be
7 performed as deemed appropriate.

8 "(7) All medications and dosages used during an oral
9 conscious sedation procedure must be recorded in the patient's
10 record of treatment.

11 "(8) An emergency cart or kit must be readily
12 accessible and must be available for immediate use during any
13 sedation procedure.

14 "(9) The only classification of drugs for sedation
15 to be administered enterally by a responsible adult
16 procedurally outside the treatment facility is minor
17 tranquilizers. Minor tranquilizers (i.e., hydroxyzine or
18 diazepam) do not include chloral hydrate or narcotics.

19 "(10) Direct clinical observation and monitoring of
20 the patient by a staff member must be continuous during the
21 recovery period. The dentist shall assess the patient's
22 responsiveness and must determine that the patient has met
23 discharge criteria prior to leaving the office and the patient
24 must be discharged into the care of a responsible person.

1 "(b) It shall be incumbent upon the operating
2 dentist to insure that the patient is appropriately monitored.
3 A sedated patient must be continuously kept under direct
4 clinical observation by a trained individual. The sedated
5 patient's oxygen saturation must be monitored by pulse
6 oximetry. Chest excursions must be observed and the color of
7 mucosa and skin continually evaluated. Back-up emergency
8 services should be identified and a protocol outlining
9 necessary procedures for their immediate employment should be
10 developed and operational for each facility.

11 "(c) Any dentist utilizing oral conscious sedation
12 procedures must have a properly equipped facility staffed with
13 a supervised team of allied dental personnel who will be
14 appropriately trained and capable of reasonably assisting the
15 dentist with procedures, problems, and emergencies incident
16 thereto. When inhalation equipment is used, in combination
17 with orally administered sedatives, it must have a ~~fail safe~~
18 failsafe system that is appropriately checked and calibrated.
19 The inhalation equipment must have the capacity for delivering
20 100 percent oxygen, and never less than 25 percent oxygen. A
21 system for delivering oxygen must be available and must have
22 adequate full-face mask and appropriate connectors, and be
23 capable of delivering oxygen under positive pressure to the
24 patient. Inhalation equipment must have a scavenging system.
25 Suction equipment must be available that allows aspiration of

1 the oral and pharyngeal cavities. A stethoscope and a
2 sphygmomanometer with cuffs of appropriate size shall be
3 immediately available.

4 "§34-9-89.

5 "When oral conscious sedation is used on any patient
6 under 12 years of age, the following provisions shall apply:

7 "(1) The drugs, dosages, and techniques used should
8 carry a margin of safety which is unlikely to render the
9 patient noninteractive and nonarousable.

10 "~~(2) In offices where pediatric patients are~~
11 ~~treated, appropriately~~ Appropriately sized emergency equipment
12 must be available."

13 Section 2. Section 34-9-7.2 is added to the Code of
14 Alabama 1975, to read as follows:

15 A 501(c)(3) entity, as defined under Section
16 501(c)(3) of the Internal Revenue Code, that operates a dental
17 clinic that provides dental services shall register with the
18 board. The information provided to the board as a part of the
19 registration process shall include the name of the
20 corporation, the nonprofit status of the corporation, sites
21 where dental services shall be provided by the corporation,
22 and the names of all persons employed by, or contracting with,
23 the corporation who are required to hold a license pursuant to
24 this chapter. A copy of the entity's 501(c)(3) certification
25 from the Internal Revenue Service shall be filed with the

1 board. If the entity has multiple clinics, the entity shall
2 register each clinic with the board and the entity shall have
3 one licensed dentist serving as chief of dental services for
4 all of the clinics. All dentists and hygienists at each clinic
5 shall possess the applicable licenses or permits required by
6 this chapter and shall be subject to this chapter.

7 Section 3. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 27-APR-11, as amended.

Greg Pappas
Clerk

Senate

02-JUN-11

Passed

Mary Ann Wilkinson Case

REL: 4/01/2011

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2010-2011

2100175

Mary Ann Wilkinson

v.

Board of Dental Examiners of Alabama

Appeal from Jefferson Circuit Court (CV-10-
902491)

THOMAS, Judge.

Mary Ann Wilkinson was employed by the Board of Dental Examiners of Alabama ("the Board") for several years, until the Board terminated her employment in December 2009. During her tenure with the Board, Wilkinson was employed pursuant to

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yearly contracts. Wilkinson's employment contracts provided that the "sole remedy for the settlement of any and all disputes arising under the terms of this agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama."

In July 2010, Wilkinson sued the Board, seeking compensation she alleged was due to her pursuant to her employment contracts. Wilkinson based her breach-of-contract claim on an audit of the Board covering the period between October 2003 and September 2007 conducted by the Department of Examiners of Public Accounts of Alabama, which was completed in February 2009. Wilkinson alleged that the audit had revealed that the Board had not paid Wilkinson for her attendance at Board meetings between October 2004 and September 2007 and that the Board had overpaid Wilkinson other compensation. According to Wilkinson's complaint, the audit determined that the Board had underpaid Wilkinson \$31,950 and had overpaid Wilkinson \$21,787.92. Thus, Wilkinson contended in her complaint that the Board owed her \$10,162.08. She also requested a further audit and compensation for her attendance at Board meetings between October 2007 and December 2009.

The Board filed a motion to dismiss Wilkinson's complaint, in which it alleged that the complaint should be dismissed pursuant to Rule 12 (b) (1), Ala. R. Civ. P., on the ground that the trial court lacked subject-matter jurisdiction because the Board, as a State agency, is immune from suit under Ala. Const. 1901, Art. I, § 14; that the complaint should be dismissed pursuant to Rule 12(b)(6), Ala. R. Civ. P., because it failed to state a claim; and that the complaint should be dismissed pursuant to Rule 12(b)(3), Ala. R. Civ. P., for improper venue. The motion to dismiss contained legal argument concerning only the immunity issue and whether the employment contracts, which provided that Wilkinson's sole remedy would lie with the Board of Adjustment, barred her complaint in the circuit court. Wilkinson responded to the Board's motion to dismiss with a detailed brief,¹ arguing that

¹Wilkinson also attached to her response documentary evidence indicating that the Board was self-supporting. However, that evidence did not convert the Board's motion to dismiss into a motion for a summary judgment because the motion was, by and large, a motion seeking dismissal pursuant to Rule 12(b) (1) and attacking the trial court's subject-matter jurisdiction based on the Board's assertion of § 14 immunity. See Williams v. Skysite Commc'ns. Corp., 781 So. 2d 241, 245 (Ala. Civ. App. 2000) ("Evidentiary matters may be freely submitted on a motion to dismiss that attacks jurisdiction."). None of the arguments made by the Board was

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the Board did not qualify for immunity under § 14 and that, therefore, her claim could not be heard by the Board of Adjustment. See Ala. Code 1975, § 41-9-62 (b) (stating that the Board of Adjustment has no jurisdiction "to settle or adjust any matter or claim of which the courts of this state have or had jurisdiction"); see also Lee v. Cunningham, 234 Ala. 639, 641, 176 So. 477, 479 (1937); and Vaughan v. Sibley, 709 So. 2d 482, 486 (Ala. Civ. App. 1997) ("The Board of Adjustment has jurisdiction over claims against the state that are not justiciable in the courts because of the state's constitutional immunity from being made a defendant."). After the Board replied to Wilkinson's response and after a hearing, the trial court dismissed Wilkinson's complaint, finding in its order that the Board was a State agency because "the funds raised by the Board are appropriated by the State to the Board for use as provided by statute." Wilkinson timely appealed to this court.

"In Newman v. Savas, 878 So. 2d 1147[, 1148-49] (Ala. 2003), this Court set out the standard of review of a ruling on a motion to dismiss for lack of subject-matter jurisdiction:

an argument that the complaint failed to state a claim.

" 'A ruling on a motion to dismiss is reviewed without a presumption of correctness. Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). This Court must accept the allegations of the complaint as true. Creola Land Dev., Inc. v. Bentbrooke Housing, L.L.C., 828 So. 2d 285, 288 (Ala. 2002) . Furthermore, in reviewing a ruling on a motion to dismiss we will not consider whether the pleader will ultimately prevail but whether the pleader may possibly prevail. Nance, 622 So. 2d at 299.'"

Pontius v. State Farm Mut. Auto. Ins. Co., 915 So. 2d 557, 563 (Ala. 2005).

On appeal, Wilkinson challenges the Board's entitlement to § 14 immunity.

"Section 14 of the Alabama Constitution provides 'that the State of Alabama shall never be made a defendant in any court of law or equity.' This court has held that the use of the word 'State' in Section 14 was intended to protect from suit only immediate and strictly governmental agencies of the State. Ex parte Board of School Commissioners of Mobile County, 230 Ala. 304, 161 So. 108 (1935)."

Thomas v. Alabama Mun. Elec. Auth., 432 So. 2d 470, 480 (Ala. 1983). Wilkinson argues that the Board is not an "immediate and strictly governmental agenc[y] of the State," and, therefore, that it is not entitled to § 14 immunity.

The Board relies on Delavan v. Board of Dental Examiners of Alabama, 620 So. 2d 13, 18 (Ala. Civ. App. 1992), and

Vining v. Board of Dental Examiners of Alabama, 492 So. 2d 607, 610 (Ala. Civ. App. 1985) . In both cases, this court described the Board as a State agency. In neither case was the immunity of the Board an issue, and in neither case, as Wilkinson aptly points out, did this court undertake an analysis of the factors relevant to a determination whether the Board is an "agency" entitled to § 14 immunity. Thus, we agree with Wilkinson that our inquiry cannot end with Delavan and Vining.

Alabama courts have spent considerable time developing a method for determining when an entity created by the legislature is an "immediate and strictly governmental agenc[y] of the State" for purposes of § 14 immunity.

"Whether a lawsuit against a body created by legislative enactment is a suit against the state depends on the character of power delegated to the body, the relation of the body to the state, and the nature of the function performed by the body. All factors in the relationship must be examined to determine whether the suit is against an arm of the state or merely against a franchisee licensed for some beneficial purpose."

Armory Comm'n of Alabama v. Staudt, 388 So. 2d 991, 993 (Ala. 1980) (citing State Docks Comm'n v. Barnes, 225 Ala. 403, 406-07, 143 So. 581, 584 (1932)). In Staudt, the supreme

court was called upon to determine whether the Armory Commission of Alabama ("the commission") was immune from a suit arising from a slip and fall on the premises of a National Guard Armory. Staudt, 388 So. 2d at 992. The statute creating the Commission permitted it to incorporate and to sue or be sued in its own name. Id. However, the supreme court noted that the statute permitting the Commission to sue or be sued could not waive § 14 immunity if the Commission were a State agency entitled to such immunity. Id. The mere fact that the Commission was a corporate body was not determinative, said the court; instead, as quoted above, the court indicated that three main factors should be considered when determining whether a certain entity is immune from suit under § 14: "the character of power delegated to the body, the relation of the body to the state, and the nature of the function performed by the body." Id. at 993. Because the State appropriated money to the Commission and because the governor was authorized to use other State funds to pay any expenses or obligations of the Commission if the appropriation were insufficient, the Staudt court determined that the Commission was, indeed, an agency of the State, in large part

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because a suit against the Commission had the ability to impact the State treasury. Id. at 993-94.

The Board relies on language quoted in Staudt, 388 So. 2d at 993-94, which first appeared in White v. Alabama Insane Hospital, 138 Ala. 479, 482, 35 So. 454, 454 (1903), as a basis for its argument that it is entitled to § 14 immunity:

"There is a clear distinction between that class of incorporated institutions belonging [to] and controlled by the State and private incorporations, in the fact that the only property interest vested in the former belonged to the State. So, too, there is a distinction between this class, of incorporations and municipal corporations. Note on page 378 of 29 L. R. A.

"The power of the State to create a body corporate as its agent to carry on certain special kinds of work for its benefit or for the public interest can not be doubted. And where this power is exercised the institution thus established is in every sense a State institution and belongs to the State, although managed and its affairs administered under the supervision of trustees of the body corporate created for that purpose. Who doubts the right of the State to create a corporation for the management of an insane hospital, or a deaf and dumb asylum, or an institution of learning? And where they are created, who has the property interest in these institutions? Clearly the State. In the exercise of its right of sovereignty it established them for public purposes; it donates the property or the funds to purchase it upon which they are built, [and] supplies the means by which they are maintained and operated. They have no capital stock, or shares held by individuals. Indeed, they have no membership or stockholders. They are not created for

profit, but solely as public benefactors, the beneficiaries being the people who compose the State."

White, 138 Ala. at 481-82, 35 So. at 454. In White, the supreme court determined that the Alabama Insane Hospital ("the hospital") was immune from suit. The court described the Hospital as "a mere state agency created for the purpose of [] caring for and treating the unfortunate insane citizens of the State -- a purely governmental function, wise and beneficial." Id. at 483, 35 So. 2d at 454. However, the court based its decision on the facts that the Hospital was an "incorporated institution [] belonging [to] and controlled by the State," that the property on which it operated was owned by the State, and that the State provided the means for its operation. Id. at 481, 35 So. 2d at 454.

Based on the above-quoted language from White, and the outcome in Staudt, the Board argues that it, like other agencies created for purposes benefiting the public interest, is immune under § 14 by virtue of its creation by the legislature. The Board, however, misunderstands the test enunciated in Staudt and followed since, which focuses on much

more than whether the alleged "agency" was created by the legislature for some purpose of benefit to the public.

To be sure, the functions and purpose of an entity seeking immunity is an important factor under the Staudt test; however, our supreme court has explained that the main, but not sole, focus of the immunity determination must be whether the liability of the entity would result in liability for the State and thus potentially impact the State treasury. Ex parte Greater Mobile-Washington County Mental Health-Mental Retardation Bd., Inc., 940 So. 2d 990, 1004 (Ala. 2006) ("MH-MRB") . As explained in MH-MRB, in most every case decided after Staudt, the "treasury factor" has been, if not the determinative factor, one of the determinative factors in deciding whether an entity was a State agency entitled to § 14 immunity. MH-MRB, 940 So. 2d at 1004. Immunity is designed to shield the State treasury, not to afford immunity to each and every entity created by statute, even if the purpose of the entity is to protect the public welfare.

Based on Staudt and as explained in MH-MRB, we must examine the "complete relationship between the State and the Board," MH-MRB, 940 So. 2d at 1005, and we begin by first

noting that, despite the trial court's finding that "the funds raised by the Board are appropriated by the State to the Board," it does not appear that the Board receives any State funds at all. One of the statutes creating the Board does contain language indicating that all money collected by the Board is "appropriated" to the Board. Ala. Code 1975, § 34-9-41. However, that same statute further provides that the money collected by the Board for fees and other receipts is paid to the secretary-treasurer of the Board and is deposited in a bank selected by the members of the Board. Id. The money collected by the Board is never placed in the State treasury. Cf. Ala. Code 1975, § 34-43-14 (establishing a special revenue fund in the State treasury for the Alabama Board of Massage Therapy Fund) . The Board, from all that appears in the record, is fully self-supporting, and no actual appropriation of funds to the Board from the State appears to be required in order for it to perform its functions. Thus, the State does not "'suppl[y] the means' by which [the Board is] maintained and operated." MH-MRB, 940 So. 2d at 1004 (quoting White, 138 Ala. at 482, 35 So. at 454) .

Another factor that the courts have found relevant to the immunity issue is whether the statute creating the entity specifically characterizes the entity as an agency of the State. MH-MRB, 940 So. 2d at 1005. The statutes creating the Board do not. Likewise, we must look to the authority and power granted the Board and the level of State oversight of the Board and its functions. Id. at 1003. Nothing in the pertinent statutes or the record indicates that the State oversees the functions of the Board, which include, among other things, administering examinations to those seeking a license to practice dentistry or dental hygiene and investigating violations of laws or regulations governing the practice of dentistry and dental hygiene. Ala. Code 1975, §§ 34-9-43 & -43.1.² The Board does not appear to have any

² Section 34-9-43 provides:

"The board shall exercise, subject to this chapter, the following powers and duties:

"(1) Adopt rules for its government as deemed necessary and proper.

"(2) Prescribe rules for qualification and licensing of dentists and dental hygienists.

" (3) Conduct examinations to ascertain

the qualification and fitness of applicants for licenses as dentists and dental hygienists.

"(4) Make rules and regulations regarding sanitation.

" (5) Formulate rules and regulations by which dental schools and colleges are approved, and formulate rules and regulations by which training, educational, technical, vocational, or any other institution which provides instruction for dental assistants, dental laboratory technicians, or any other paradental are approved.

"(6) Grant licenses, issue license certificates, teaching permits, and annual registration certificates in conformity with this chapter to such qualified dentists and dental hygienists.

"(7) Conduct hearings or proceedings to impose the penalties specified in Section 34-9-18.

"(8)a. Employ necessary persons to assist in performing its duties in the administration and enforcement of this chapter, and to provide offices, furniture, fixtures, supplies, printing, or secretarial service to these persons and expend necessary funds.

"b. Employ an attorney or attorneys, subject to the approval of the Attorney General, to advise and assist in the carrying out and enforcing of the provisions of this chapter. Provided,

however, if the board contracts with an outside attorney to be general counsel to the board, that attorney or any member of a law firm with which he or she is associated shall not function as the board's prosecutor at disciplinary hearings.

"(9)a. Investigate alleged violations of this chapter and institute or have instituted before the board or the proper court appropriate proceedings regarding the violation.

"b. Authorize and employ investigators who comply with the Peace Officers' Minimum Standards and Training Act to exercise the powers of a peace officer in investigating alleged violations of the drug or controlled substances laws by persons licensed pursuant to this chapter, including the powers of arrest and inspection of documents. These investigators shall not be paid a subsistence allowance by the board.

"(10) Adopt rules and regulations to implement this chapter.

"(11) Publish, on a quarterly basis, all minutes, except minutes of executive sessions, financial reports, schedules of meetings, including anticipated executive sessions, and other pertinent information on the board's website no later than 90 days following the date of occurrence. In addition, publish annually the rules and regulations promulgated by the board, a copy of the Dental Practice Act, and a list of all persons licensed to practice under

power to own or sell property in its own name, a factor that has been considered relevant in other cases. See, e.g., *Rodgers v. Hopper*, 768 So. 2d 963, 967 (Ala. 2000); *Tallaseehatchie Creek Watershed Conservancy Dist. v. Allred*, 620 So. 2d 628, 630 (Ala. 1993) . The Board can enter into certain contracts, including employment contracts relating to administrative and investigative services and contracts for legal services, a power that has been considered as indicium that the alleged agency is actually a separate entity. *Rodgers*, 768 So. 2d at 967; *Allred*, 620 So. 2d at 630.

Contracts for legal services, however, must be approved by the attorney general, a fact that indicates incidental control over that aspect of the Board's powers. Ala. Code 1975, § 34-9-43(8)b. Additionally, the Board's accounts must

this chapter.

"(12) Attend meetings, seminars, work shops, or events that may improve the function and efficiency of the board or improve the ability of the board to enforce and administer this chapter."

Section 34-9-43.1 provides further that the Board may employ attorneys, investigators, agents, and consultants and specifies what compensation consultants may receive.

be audited by a certified public accountant of the State, and reports of the money received and disbursed and of the activities of the Board together with the audit must be filed with the State Finance Department. Ala. Code 1975, § 34-9-42. The level of oversight over the Board by the State would appear to be minimal, which, according to the MH-MRB court, is not indicative of State-agency status. MH-MRB, 940 So. 2d at 1004.

Based on our consideration of the relevant factors under Staudt as applied in detail by our supreme court in MH-MRB, we conclude that the Board does not qualify as an "immediate and strictly governmental agenc[y] of the State" and, therefore, that it is not entitled to § 14 immunity. Thomas, 432 So. 2d at 480. Based on that conclusion, we must also agree with Wilkinson that, despite the language contained in her employment contracts, the Board of Adjustment is not the appropriate forum for her claims against the Board, because the Board of Adjustment provides a forum for addressing those claims otherwise barred by § 14 immunity and has absolutely no jurisdiction over claims or actions that may be brought in the courts of this State. § 41-9-62(b); see also Lee, 234 Ala. at

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641, 176 So. at 479; and Vaughan, 709 So. 2d at 486. Accordingly, we reverse the judgment of the trial court dismissing Wilkinson's complaint against the Board, and we remand the cause for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Thompson, P.J., and Moore, J., concur.

Pittman and Bryan, JJ., dissent, without writings.

Natalie Versaglio Case

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FILED
2010Aug-27
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

NATALIE VERSIGLIO,	}	
	}	
Plaintiff,	}	
	}	CIVIL ACTION NO.
v.	}	10-AR-1850-S
	}	
BOARD OF DENTAL EXAMINERS OF }		
ALABAMA,	}	
	}	
Defendant.	}	

MEMORANDUM OPINION

Fairly early in this court's judicial career, it discovered that the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, et seq., has a wide embrace. In *Patel v. Quality Inn South*, 846 F.2d 700 (11th Cir. 1988), this court learned the hard way that undocumented foreign nationals (i.e. "illegal aliens") have a right to sue their employers under the FLSA. In *Patel* the Eleventh Circuit held that the Department of Labor's interpretation of the FLSA is entitled to considerable deference. Unfortunately, there is neither regulatory nor statutory language to assist the court in resolving the jurisdictional question presented by defendant in the above-styled FLSA case.

Defendant, Board of Dental Examiners of Alabama, moves to dismiss the action brought by plaintiff, Natalie Versiglio, for alleged unpaid overtime. Defendant claims immunity from suits under the FSLA. It cites *Delavan v. Board of Dental Examiners of Alabama*, 620 S.2d 13 (Ala.Civ.App. 1992), for the proposition that

it is a state agency and therefore enjoys the sovereign immunity allegedly conferred upon it by Alabama Constitution, Art. I, § 14, and by the Eleventh Amendment to the Constitution of the United States. The court acknowledges that FLSA does not, like some federal statutes, purport to override sovereign immunities that might otherwise appertain. The question in this case, then, becomes: "Is this defendant a state 'agency' for the purposes of immunity to FLSA claims?" Defendant has cited no case that provides an answer to this question, and the court has found none.

Brown, et al. v. University of Alabama at Birmingham, et al., CV-94-JFG-0018, was a 1994 case assigned to another judge of this court. It was filed under the FLSA by eighty-one (81) employees of UAB. UAB did not file a motion to dismiss interposing any sovereign immunity defense. Instead, it filed an answer. Not too much later, the case was settled, and the action was dismissed. UAB is most assuredly more of an "agency" of the State of Alabama than is the entity this plaintiff appropriately describes as a "quasi"-state agency. Apparently, UAB does not believe itself immune to claims against it by its employees under FLSA law. Perhaps UAB should have thrown the gauntlet in 1994. The court cannot imagine UAB's not having relied on an absolute defense.

If this court should agree with this defendant and should dismiss the above-entitled act with prejudice, and thus recognize its claimed immunity, it would follow as night follows day that the

many other boards or "agencies" created by the Legislature of the State of Alabama would also be immune from FSLA claims, because said "agencies" are indistinguishable from this defendant in all relevant respects. They are:

Alabama State Board of Public Accountants § 34-1-3, Ala. Code

The Alabama Electronic Security Board of Licensure § 34-1A-2, Ala. Code

The Board for Registration of Architects § 34-2-38, Ala. Code

The Board of Examiners of Assisted Living

Administrators of the State of Alabama § 34-2A-1, Ala. Code

The Board of Commissioners of the State Bar § 34-3-2, Ala. Code

The State Board of Auctioneers § 34-4-4, Ala. Code

Alabama Board of Barber Examiners Ala. Code § 34-5-13

Alabama Board of Cosmetology § 34-7A-3, Ala. Code

State Licensing Board for General Contractors § 34-8-2, Ala. Code

The Alabama Board of Examiners in Counseling § 34-8A-1, Ala. Code

The Alabama Board of Court Reporting § 34-8B-2, Ala. Code

The State Board of Licensure for Professional Engineers and Land Surveyors
§ 34-11-30, Ala. Code

The State Board of Registration for Foresters § 34-12-1, Ala. Code

Alabama Board of Funeral Service § 34-13-20, Ala. Code

The Board of Hearing Instrument Dealers § 34-14-1, Ala. Code

The Home Builders Licensure Board § 34-14A-2, Ala. Code

The Board of Home Medical Services Providers § 34-14C-2, Ala. Code

Alabama State Board of Registration for Interior Design § 34-15B-4,
Ala. Code

Alabama Licensure Board for Interpreters and Translators § 34-16-4,
Ala. Code

The Alabama State Board of Examiners of Landscape Architects § 34-
17-1, Ala. Code

The Alabama Board of Examiners in Marriage and Family Therapy §
34-17A-3, Ala. Code

The Board of Medical Technicians Examiners for the State of Alabama
§ 34-18-40, Ala. Code

The Board of Nursing and the Board of Medical Examiners § 34-19-4,
Ala. Code

The Board of Examiners of Nursing Home Administrators of the State
of Alabama § 34-20-1, Ala. Code

Board of Nursing § 34-21-2, Ala. Code

The Alabama Onsite Wastewater Board § 34-21A-1, Ala. Code

The Alabama Board of Optometry § 34-22-1, Ala. Code

The Alabama State Board of Pharmacy § 34-23-1, Ala. Code

Board of Medical Examiners of the State of Alabama § 34-24-53, Ala. Code

The Polygraph Examiners Board § 34-25-1, Ala. Code

The Alabama State Board of Prosthetists or Orthotists § 34-25A-3, Ala. Code

Alabama Board of Examiners in Psychology § 34-26-20, Ala. Code

Alabama Real Estate Commission § 34-27-2, Ala. Code

The State of Alabama Real Estate Appraisers Board § 34-27A-2, Ala. Code

The Alabama State Board of Respiratory Therapy § 34-27B-5, Ala. Code

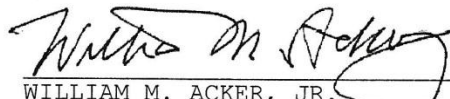
The Alabama Board of Examiners for Speech-Language Pathology and Audiology
§ 34-28A-40, Ala. Code

Alabama State Board of Veterinary Medical Examiners § 34-29-61, Ala. Code

All of the above-listed "agencies" are creatures of statute, as is this defendant, which came into being by, and owes its existence to, § 34-9-1, Ala. Code. All of these entities are similarly self-governed and self-funded except for minuscule reimbursement possibilities. There is nothing in the statutory charters of any of these "agencies" to suggest that the State of Alabama is itself obligated to pay from its treasury liabilities that may be incurred by the "agencies" to third parties, including to unhappy employees.

Having found no binding authority on the precise jurisdictional question before the court, the court respectfully declines to be the first court to cloak an Alabama agency like this defendant, either with State sovereign immunity, or with Eleventh Amendment immunity from FLSA claims. Defendant's motion to dismiss will be denied by separate order.

DONE this 27th day of August, 2010.


WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE

Board Members



BOARD OF DENTAL EXAMINERS OF ALABAMA
Stadium Parkway Office Center-Suite 112
5346 Stadium Trace Parkway
Hoover, Al 35244-4583
PHONE 205-985-7267
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e-mail: bdeal@dentalboard.org

May 2, 2011

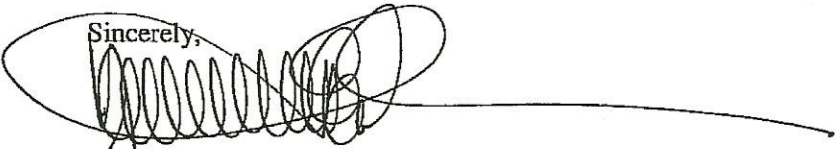
Bilikisu Alabi
Examiners of Publics Accounts
Post Office Box 302251
Montgomery, Alabama 36130-2251

Dear Ms. Alabi:

Please find attached a list of all the current members of the Board of Dental Examiners of Alabama and their positions. Please let me know if you have any questions or need any further assistance in this matter.

I look forward to working with you during this Sunset Audit.

Sincerely,



Keith E. Warren
Executive Director

BOARD MEMBERS

<u>Member</u>	<u>Address</u>	<u>Term Expiration</u>
Thomas T. Willis, Jr., DMD President	Decatur, Alabama	October 2012
Stanley Michael Mahan, Jr., DMD Vice President	Brierfield, Alabama	October 2011
John David Northcutt, III, DMD Secretary/Treasurer	Fairhope, Alabama	October 2013
Bobby R. Wells, DMD	Birmingham, Alabama	October 2014
Hunter V. Pope, DMD	Birmingham, Alabama	October 2014
Stephen R. Striclin	Alabaster, Alabama	October 2015
Sandra Kay Alexander, RDH	Rainbow City, Alabama	October 2015

BOARD RESPONSE TO SIGNIFICANT ISSUES



BOARD OF DENTAL EXAMINERS OF ALABAMA
Stadium Parkway Office Center-Suite 112
5346 Stadium Trace Parkway
Hoover, Al 35244-4583
PHONE 205-985-7267
FAX 205-985-0674
e-mail: bdeal@dentalboard.org

August 11, 2011

John E. Norris
Director, Operational Division
Examiners of Public Accounts
State of Alabama
Post Office Box 302251
Montgomery, Alabama 36130-2251

Dear Mr. Norris:

Please find enclosed the Boards responses to the Significant Issues outlined in the report to the Sunset Committee for the Board of Auctioneers. As always, we appreciate all the guidance and assistance we received from your department and look forward to a great continued working relationship.

Please do not hesitate to contact me should you have any questions pertaining to any of the responses to the significant issues. Thank you for your assistance and cooperation in this matter.

Sincerely,

Keith E. Warren
Executive Director

RESPONSE TO SIGNIFICANT ISSUES
BOARD OF DENTAL EXAMINERS OF ALABAMA
August 10, 2011

Significant Issue 2011-01

The Board voted at its April 2011 meeting to hire Warren & Company, Inc. to provide administrative management services and relocate the office to Montgomery during the two year contractual period. This matter has been discussed with various members of the Board in the past and has also been discussed during previous Sunset Hearings.

Significant Issue 2011-02

The fees that are assessed and collected by the Alabama Dental Professional Wellness Committee are processed through Consent or Settlement Agreements between the committee and the licensee. Under the Administrative Procedures Act, it allows an agency to settle or arrange any type of agreement between the Board and a licensee without any limitations. These agreements are utilized for self-reporters to the program and allow the licensees to continue to work in their profession during the time they receive treatment and remain under the monitoring requirements of the committee. Licensees that do not fit into this category are generally disciplined by the Board and the fees are assessed and collected through orders arrived from the Administrative Hearing Process. The Board will continue to research this matter to determine if statutory changes are necessary or required.

Significant Issue 2011-03

The Board has voted to establish a non-profit foundation to continue the education of dental hygiene that the Board has provided for many years. The Board's goal in creating this foundation for the Dental Hygiene Program is to protect the integrity of the program as well as create a more stable environment to ensure its mission of providing this education regardless of the future of the Board of Dental Examiners and the members that are elected to the Board.

Significant Issue 2011-04

The Board is awaiting on both the United States District Court for the Northern District of Alabama, Southern Division and the Alabama Supreme Court to make their decisions in these cases. The attorneys involved in these cases are hopeful and confident that the two decisions will state that the Board of Dental Examiners of Alabama is indeed a state agency.

Significant Issue 2011-05

At its August 2011 Board meeting, the Board ratified the Emergency Contract (#C1DEN0001) to comply with Section 41-16-23, Code of Ala. 1975, declaring an emergency to hire Warren & Company, Inc. to provide for a permanent Executive Director, a full-time Administrator, provide office space and administrative services in Montgomery. The second contract that will expire in April 2013 is to provide the same services as well as relocate the office, records and property to Montgomery during the two-year period. Warren & Company, Inc. has been under contract with the Board since June 2009, first for Mr. Warren to serve as a consultant and to serve as Interim Executive Director. To ensure continuity in the leadership and to facilitate the relocation of the Board office, the Board approved the contract with the understanding that these services would be publicly bid once the relocation is complete.

Significant Issue 2011-06

This contract was presented to Contract Review however; the internal file in the office was incomplete of the documentation that was prepared for this contract. All original files are now maintained in the Warren & Company office in Montgomery to ensure these issues do not continue and that all required paperwork is retained and available for not only the Examiners of Public Accounts but for any public inspection as well.

Significant Issue 2011-07

In the process of deciding to relocate to Board to Montgomery, the Board would entertain a contract from Dr. Dixon to prosecute disciplinary cases and resulting in her resignation effective May 31, 2011. At its May 2011 meeting, an agenda item was added to discuss these services to establish a legal services contract for Dr. Dixon. A presentation was given by the Secretary-Treasurer and Dr. Dixon regarding the legal management services proposal and later that day approved a contract in the annual amount of \$270,000 to be divided by 24 payments. The contract was prepared and submitted to Attorney General Strange for his approval per Section 34-9-43 (8)(b), Code of Ala., 1975. The contract was not approved by Attorney General Strange resulting in the Board not having a prosecuting attorney until an emergency was declared at its July 2011 meeting and a 60 day Emergency Contract was approved and submitted to Attorney General Strange and Governor Bentley where it was approved by both offices. The emergency contract was for a rate of \$150 per hour for legal services, \$50 per hour for legal assistance services, plus other expenses incurred. At its August 2011 Board meeting, the Board approved a two-year legal services contract with The Dixon Law Firm, PC, for the same terms approved in the emergency contract. This contract will be presented at the September 2011 Contract Review Committee.

Significant Issue 2011-08

The Board did require a previous successful candidate of the Alabama Dental Hygiene Program to re-enter the program based on the information reviewed at the time of re-application. The candidate originally completed the program in 2000 and had failed the hygiene examination on three occasions. Since there are not established remedial procedures for a candidate to utilize, the Board agreed and voted for the candidate to re-enter the program again. Based on this finding, the Board will review this issue in more detail to create avenues for candidates to receive remedial or review assistance should they not be successful in passing the required examination(s).

Significant Issue 2011-09

In researching the Board minutes, I was unable to locate the Board's action regarding extending a licensee's expiration date to the following year. The Board does recall a candidate last year that had been pending for almost a year for licensure by credentials and was finally approved. The Board decided to extend his expiration date due to the fact his license would only be active for a couple of weeks before he would have to renew his license for the following year. The Board will not continue this practice and does not currently have a policy reflecting the extensions of licensee expiration date that are approved close to the end of a licensing cycle.

Significant Issue 2011-10

During the 2011 Legislative Session, Act Number 2011-571 was passed expanding the Board's disciplinary authority to include negligence which will allow the Board to address more issues through complaints received that we were unable to address previously. The Board does currently dismiss complaints due to no evidence to sustain but with now having negligence and defining it further through the rule making process, this percentage of unsatisfactory results from the Board should decrease.

Significant Issue 2011-11

Act Number 2011-571 now allows for the registration of non-profit dental operations in the state. These entities will now be registered with the Board, renew this registration on an annual basis and will fall under the jurisdiction of the Board of Dental Examiners should there be a need to investigate a complaint.

Prior Findings/Significant Issues

Prior Finding 2000-01

Governor Bentley's Office has now released new guidelines for Out of State Travel and the Board has received this information. Before any travel claims are paid, a thorough review will be conducted to ensure that all proper documentation is included and that all calculations are correct in accordance with the Fiscal Policies & Procedures issued by the Department of Finance.

Prior Finding 2001-01

Employee leave and time sheets are received and reviewed by the Financial Secretary and are now reviewed by the Executive Director. This issue should be resolved especially since the office is being relocated to Montgomery and will only have one full-time staff member (Board Investigator) after the relocation.

Prior Finding 2003-01

This finding is being resolved during the current audit being performed by Carr, Riggs & Ingram which will be available to the Examiners of Public Accounts and members of the Sunset Committee prior to the Hearing on August 25, 2011.

Prior Finding 2007-04

All compensatory time has been recalculated to correct any errors and it is also being reviewed and approved by the Executive Director prior to time is earned. This should already be resolved and will definitely not continue after the relocation to Montgomery.

Prior Finding 2007-06

This continues to be a problem but we have eliminated several of the vendors from this list by utilizing state approved vendors through the Department of Finance. The Data House is the computer company that the Board has used for some time. Since the office is being relocated, this will not be an issue in the near future. Dr. Weatherford's services should not be a problem if the foundation is successfully created. The CPA Firm conducting the current audit (Carr, Riggs & Ingram) was secured through an RFP which was advertised on the Board's web site as well as submitted to each approved CPA Vendor on the Approved Vendor List through the Department

of Finance. The Board will seek request for proposals or bids for all new services and for current services as the contracts expire.

Prior Finding 2007-11

The financial duties are currently being segregated between the Financial Secretary and Administrator. These two individuals are working together to receive checks, log them and reconcile deposits to increase the security level of the revenues received. The Executive Director reviews and approves all invoices and signs checks over \$2,500. Checks over \$2,500 require the signature of the President and Secretary/Treasurer of the Board.

Prior Finding 2007-016

Once this current audit is complete, I will consult with the Secretary/Treasurer to ensure that the Board complies with the annual report requirement in the statute and submit this information to the Department of Finance on an annual basis.